Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
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[*Latin ed. p. 1*]

ACTS OF THE HOLY SEE, CONCISELY COMPILED AND ILLUSTRATED, BY THE STUDY AND CARE OF VICTOR PIAZZESI, DOCTOR OF BOTH LAWS, OR: Legal and solemn acts emanating immediately from the Most Holy Roman Pontiff: acts among those which can be performed by the public authority, whether they are Decrees, or Instructions, or Responses, or other similar matters; especially, expositions and resolutions of cases from various Sacred Congregations of Cardinals, contributing to an accurate understanding and observance of ecclesiastical law. These are diligently compiled in a concise form: and finally, other legal matters, by which those acts which may present a difficulty are suitably explained, or which further lead to the knowledge of the law; for the benefit of those who diligently seek to understand the laws of the Church, and who labor in the governance of Christian flocks, or in maintaining the vineyard of the Lord.

ROME, FROM THE POLYGLOT PRINTING PRESS OF THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, 1896-97.

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[*Latin ed. p. 3*]

FROM THE HOLY CONGREGATION OF THE COUNCIL OF LUBLIN. REGARDING THE DISPENSATION OF MARRIAGE, September 7, VARSAVIA, 1895. Session 24, Chapter 5, Concerning Reforms. SUMMARY OF THE CASE. Maria Helena, who had not yet completed her twentieth year, was, on June 16, 1888, lawfully joined in marriage before her own parish priest in the Church of Saint Alexander, in the city of Warsaw, with Gregory Julian, who was forty years of age. This marriage did not have a happy outcome. For, although the spouses, on the third day after the marriage and subsequently almost daily, for several months, made repeated attempts, if their assertion is to be believed, they were unable to consummate the marriage. This caused the mutual love of the spouses to diminish all the more, because, as they themselves assert, their health was endangered by this abnormal cohabitation; therefore, with the consent of her husband, Helena left the marital home in May of the following year, 1889, and returned to her mother. After some months had passed, Helena approached the Bishop of Lublin, in whose diocese the husband resided, and instituted a cause concerning the nullity of the marriage due to the physical, or at least relative, impotence of the husband. Then the Judge, following the procedures of the Holy Canons, the Benedictine

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Constitution, and the Instructions of the Holy Congregation of Councils published in the year 1840, instituted an inquiry, and on June 18, 1892, pronounced a sentence declaring the marriage between Gregory and Maria to be null and void, since it was contracted with the impediment of relative impotence. Upon appeal to the Metropolitan Tribunal of Warsaw, a sentence was issued which reversed the decision of the Lublin Judge, and permitted the plaintiff to proceed to San-

[*Latin ed. p. 4*]

4. IN LUBLIN OR WARSAW. And she had recourse to the ecclesiastical court to obtain a dispensation from a marriage that was valid but not consummated. The advocates for the woman, the actress, argue that the non-consummation of the marriage is clearly established if the sworn testimonies of the spouses, confirmed by seven witnesses, and the physical examination of the woman's body are considered. However, the orators point out that full faith must be given to the testimonies of the spouses, considering their honesty and unwavering piety, which is confirmed by the testimony of the seven witnesses. But, the advocates for the non-consummation argue, what is the point of gathering testimonies when midwives and doctors, having examined the woman's body, in accordance with the laws, proclaim her to be a virgin? Therefore, the advocates observe, whatever the cause, whether moral or physical, it is of little consequence when seeking a dispensation. For, from all the evidence, it is absolutely clear that the marriage was not consummated; which both the court of Lublin and the court of Warsaw were compelled to acknowledge, and the Metropolitan Tribunal of Warsaw recognized; for while it overturned the judgment of the court of Lublin regarding the nullity of the marriage due to the relative physical impotence of the husband, it permitted the spouses to appeal to the Holy See, stating, "the actress's virginity having been established." Furthermore, the advocates are not lacking in weighty reasons for granting a dispensation from the marriage, the first of which they find in the probable nullity of the marriage due to the relative physical impotence of the husband. Indeed, Mary, in her judicial statement, explaining the reasons for her inability to cohabit with her husband, affirms: "I know what constitutes the consummation of marriage, and from the beginning, I understood that our union was not complete."

[*Latin ed. p. 5*]

LUBLIN, OR WARSAW. 5. "I attribute the husband's weakness, but I myself consider myself capable of fulfilling the duties of a wife, as the doctors have determined; but I am not functioning within the marriage." Julian himself confessed his virile insufficiency to his wife, for he said: "I attribute my inability to consummate the marriage to a particular affection for my wife; for before contact, my member would erect, and after the emission of

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seed, it would weaken, or not erect sufficiently. I consider myself capable of fulfilling the duties of a husband." This conjugal impotence, the advocates observe, was known to many, even with some witnesses. But, the defenders of the actress continue, when the question of physical impotence is raised, the doctors are the true judges. Indeed, three doctors who examined the bodies of the spouses are of one mind, that the marriage between them remains unconsummated, and cannot be consummated in the future, due to genital asymmetry and excessive irritability, indeed, due to vaginismus, with which the woman suffers, especially after repeated, fruitless attempts to consummate the marriage. And, the patrons maintain, the knowledge of experts is not invalidated by the fact that the husband may have other reasons for the unconsummation of the marriage, for he, ignorant of the art of medicine, may deceive himself. If, the defenders of Maria conclude, anyone still hesitated about the conjugal impotence, certainly the conclusions presented by the doctors at least raise a doubt about the impotence, which, unanimously, the doctors consider to be a reasonable and just basis for granting an Apostolic dispensation. The patrons easily find another reason for a dispensation in the aversion of the spouses, without hope of reconciliation. Finally, as a last reason for a dispensation, the advocates recall the grave danger of incontinence in the actress, as the Archbishop of Warsaw himself wrote to the Pope: "I commend the actress, who, being at the prime of her age, is exposed to the dangers of incontinence, and in new, opportune marriages..."

[*Latin ed. p. 6*]

6 LUBLIN. OR VARSOVIA. "He will be able to find a suitable remedy for the salvation of his soul, if he obtains the dissolution of this present marriage." OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE BOND. The defender of the marriage bond observes that the investigation has been carried out, not to demonstrate the consummation of the marriage, but to judge concerning the validity or nullity of the marriage. However, this method of using an investigation for a different purpose is exposed to many dangers and deceptions. And suspicion of collusion is not absent in the present case. Indeed, Maria defined the alleged impotence of her husband in court as follows: "I do not know whether my husband was sufficiently erect; certainly, he did not penetrate within my body, and I felt no pain. I do not know whether the husband's seed flowed. I was speaking to my husband about the impotence of consummating the perfect union, who claimed to be weakened." And Gregory said: "I did not consummate the marriage due to insufficient erection of the penis, which did not enter into the pudendal parts of my wife. I attribute the impotence of coition to a particular affection for my wife; for before contact, my member would become erect, and after the emission of seed, it would weaken, or not become erect sufficiently." These statements are contradicted by what the

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medical experts have stated. Gustav Dolinski, responding to the inquiring judge, "Can Gregory consummate the marriage with his wife?" replied: "He is unable to have intercourse with his wife due to a disproportion in the size of the genitals." Furthermore, the doctor Mauritius Cieconski replied: "He cannot consummate the marriage with his wife due to asymmetry of the genitals, since while he is endowed with robust pudendal organs, the female organs of his wife are below the usual and legitimate size for women, from which arises a physical disproportion which is the origin of relative impotence." And this is in agreement with the archiatrist Joseph Ulanowski. The speaker says, "It cannot be said that it makes no difference if the doctors and the spouses disagree on matters concerning relative impotence, since in this case, only the consummation of the marriage is at issue; for the investigation was not made concerning the consummation of the marriage, but concerning the impotence of the spouses. Therefore,..."

[*Latin ed. p. 7*]

LUBLIN. OR WARSAW. 7. If spouses or physicians have attributed importance to matters which constituted the principal object of the investigation, we should not believe that they were devoted to the truth, when they speak of the incompatibility of marriage, a matter which was then inquired into only by accident. Furthermore, the defender of the sacrament continues, that even the midwives who had examined Mary's body are diametrically opposed to one another. Therefore, the orator says, it is understood that the physicians, eager for knowledge, are misled when they speak of relative impotence due to a disproportion in the size of the genitals. They seize upon the words of the midwife, Theophila Szatowska: "Mary's female organs are weakly developed," and silently pass over the words of other midwives: "Mary is well formed, indeed, even robust... the pelvis is wide." Moreover, the midwives mention a certain irritability in Mary, while the physicians immediately speak of Mary's vaginismus. The midwives vainly state: "The instability of the genitals in the actress, as is entirely the case with virgins, is notable, but not morbid"; "The sensitivity in the entrance to the vagina is great, as is almost always the case in virgins." Furthermore, it grieves the defender of the bond, that domestic witnesses, especially the servants, who are most knowledgeable in such matters, were not brought to the examination. Nor can it be said at present, the defender concludes, that the spouses are to be given credence, because that is what the witnesses, induced by them, believe. For, besides the fact that experience teaches us to place little trust in witnesses of that kind, there is Felix Ceren, who, to the question: "Do you believe Mary to be an honest person, religious, incapable of committing perjury?" replies: "I cannot say anything about the morals of the actress, except that she was more indulgent in her speech to obscenity."

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With these things noted, the intention was to undermine.

[*Latin ed. p. 8*]

8. LUBLIN. OR WARSAW. The question of whether the Most Reverend should grant a dispensation from a marriage that has been contracted but not consummated in a certain case. RESOLUTION. After deliberation by the Sacred Congregation on the 7th of September, 1895, it was decided to respond: Affirmative. PARIS. NULLITY OF MARRIAGE. On the 25th of January, 1895, Session 24, Chapter 5 concerning the validity of marriage. SUMMARY OF THE FACTS. Count Caietan, a commander in the French army, while presiding over troops stationed in the city of Burdigala, began in the year 1877 to arrange a marriage between his only daughter, Aloysia, and a young man named Francis. Such a marriage was highly pleasing to Count Caietan, since the groom was very wealthy and resided in the parish of La Cornuaille, in the Diocese of Andegavensis, near the town of Loire, within the same Diocese, where the Count possessed an ancestral castle, in which he hoped the newlyweds would reside. However, Aloysia initially rejected this union, as she herself states, primarily due to her aversion to Francis; nevertheless, she was unable to long resist the firm will of her father. Meanwhile, Count Caietan, having relinquished his military command due to his age, departed from Burdigala around the middle of March, 1878, and returned to his ancestral castle with his entire family, as witnesses and others affirm, and it was there that he intended to have his daughter's marriage take place. Later, Count Caietan, considering that it would be inconvenient for many relatives and friends to attend the wedding at the castle, especially prominent witnesses to the marriage, namely the Duke d'Aumale and General Ducrot, who resided in Paris, decided, as some witnesses testify, that Aloysia's marriage should be celebrated in Paris. Therefore, Count Caietan, on the 22nd or 23rd of March, 1888, traveled to Paris with his daughter.

[*Latin ed. p. 9*]

PARIS. She arrived on the 9th, staying for several days at the Hôtel des Ministres, and then at the larger hotel at 28, Cours la Reine; located in the parish of Saint Peter of Chaillot. Aloysia, after having stayed with her father for about a month at the Hôtel du Palais, on May 7, 1878, at the age of nearly four years, was married to Francis, who was 25 years old, by the priest Perdreau, with the permission of the parish priest of Saint Peter of Chaillot; without, as is now asserted, the delegation of the parish priests of Loire, or of La Cornu, or of Andegaven. The bishops. The spouses, on the same day of their marriage, began a pleasurable journey, which, after its completion, led them to the estate of Vallière, where Aloysia's father also returned. These nuptials were destined for an unhappy outcome; there was little or no harmony of souls; for the husband appears

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to have maintained dishonorable relations with another woman. Finally, after 12 years of cohabitation, Francis abandoned his wife, because she refused to treat him amicably and to tolerate the woman who was said by all to be his mistress. After a reconciliation that proved fruitless, Aloysia, in the year 1891, petitioned and easily obtained from the civil authorities the separation of property and goods. Finally, on April 22, 1894, she presented a petition to the Most Reverend Archbishop of Paris, earnestly requesting that her marriage be declared null and void due to the impediment of clandestinity and the grave lack of reverence caused by her father. The Paris court immediately initiated the proceedings; and, in addition to the spouses and the Count Caietan, twenty-one witnesses were examined under oath, either summoned by the plaintiff or called by the court. And finally, after a judicial investigation conducted with all due diligence, the appointed judge delivered his judgment on March 28, 1895, declaring that the marriage was null and void due to a defect in the form prescribed by Trent. A Synopsis of the Defense. Aloysia's advocate presented his argument in two main points, and in the first point, he sought to demonstrate:

[*Latin ed. p. 10*]

10. The parties resided in the parish of La Cornuaille; the woman, however, resided in the parish of Loire, in the diocese of Angers. When both parties petitioned to marry in Paris in the year 1878, the marriage was celebrated solely in the parish of Saint Peter of Chaillot, neither party having previously acquired a domicile there. It is evident, and not disputed by the opposing side, that the man had his domicile at the time of the marriage in the parish of La Cornuaille, and had not acquired a quasi-domicile in Paris. In addition to the testimonies of the spouses, several other witnesses attest to this. Furthermore, the advocate continues, it is clear that the woman petitioned to have the marriage celebrated solely in the parish of Saint Peter, remained there for only a few days, and departed on the very day of the marriage, so that she could not have acquired a domicile there. Regarding the woman's domicile, the advocate observes how, according to the law, the domicile of minor children is considered to be in the place where the father has his domicile. But there is no doubt that, at the time of the marriage, the father of Aloysia had his domicile in the castle of Vaillère, in the parish of Loire, in the diocese of Angers. Moreover, the advocate states, it cannot be said that Caietan lost his domicile because he often left the place of his native domicile; for, according to Cardinal D'Annibale, in *Summa Par.* I, §§ 83 and 84, notes 14 and 23, a domicile, once acquired, is not lost unless one departs with the intention of never returning, according to *L. 20 Ad Munie* and *L. 7 Cod. De Inco.* It is retained if one departs, even for a long time, but with the intention of returning, because in that case, one does not appear to have departed, according to *L. 27, § Celsus, Ad Municipi*, *L. 27 De Inst. leg.* and *L. 29 de Reg. Iur.* Therefore, it is not sufficient to

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have departed if one intends to return. However, according to numerous witnesses questioned on this matter, not one stated that the father of the woman, when leaving the ancestral castle, intended never to return or to abandon his native domicile; but all testified that he always left with the intention of returning, and in fact, he often stayed there for a considerable period.

[*Latin ed. p. 11*]

PARISIAN. 11 Although, according to the speaker, what has been explained so far sufficiently demonstrates that Caietan resided in his ancestral castle of Vallière during the time of his daughter's marriage, there are also other arguments that show the same thing more clearly. As the Advocate recounts, when the Duke completed the time for granting stipends in March 1878, he immediately departed for Bordeaux, stating that he would not return, and went directly to his castle with his entire family and his belongings, and took steps to secure it. To prevent his daughter from being separated from him, he proposed marriage to her with Francis, from the neighboring village of Comuaille, who agreed to reside in his daughter's home. Therefore, under certain conditions, and reserving a portion for himself, he gave the castle to his daughter, and the deed of donation was executed by a public notary in the aforementioned village of Loire, a few days before the wedding. Finally, the marriage was to be celebrated in the parish church of Loire; but Caietan, not wanting to compel the Duke d'Aumale and the Duke of the Army, Ducrot, to undertake a long journey, and also considering that it would not be possible for them, along with other relatives and acquaintances, to be properly received at the castle, he decided that the marriage would take place in Paris, and indeed, he took his daughter there and celebrated the marriage in the church of Saint Peter, so that she, or at least he, might have a domicile there. All of this, the advocate demonstrates, through the unanimous testimony of many witnesses. Furthermore, the procurator notes that Caietan, when questioned about his domicile by the Minister of War in March 1878, reported: "I hastened to inform him that he should address his orders to me at the castle of Vallière"; and the Minister himself declares: "You indicated your address to me in Paris, and I know personally that at that time you were residing at the castle of Vallière." And indeed, after his daughter's marriage, upon leaving Paris, he returned to his ancestral castle and has resided there ever since. Since some of the adversaries asserted that Caietan should be considered to be residing in Paris, the advocate refutes this by citing the teaching of Cardinal D'Annibale, *Summa*, part 1.

[*Latin ed. p. 12*]

12. PARISIEN. § 84. "He who, having no fixed dwelling anywhere, uses uncertain lodgings; or who, having left his dwelling, seeks where he may

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reside and remain, is properly called a vagrant." However, no sane person, the advocate observes, can assert that Caietanus left the dwelling of the town of Loiré, if one only considers that he departed from his *castello* with the intention of returning as soon as possible, in order to bring his daughter to Paris for her wedding, and resided there in an inn; 2°. that he himself returned there three days after the wedding, and his daughter, along with her husband, returned there after their wedding journey. The advocate also adduces another argument in favor of the plaintiff's domicile in the place of Loiré. For, since the father wished that his daughter should remain there for an extended period, a few days before the wedding, he validly transferred the *castello* to her as a gift, reserving a portion for himself, so that she might live there with her husband. Thus, Aloysia, entering into marriage, had the sum of her fortune in her *castello* with the intention of remaining there permanently, and indeed, after the wedding journey, she returned there with her husband. Therefore, the advocate for Aloysia observes, since in this case the requirements for acquiring a domicile are present, both in intention and in fact, as Cardinal D'Annibale states in *Summa par.* I, § 84, it is evident that the plaintiff, having temporarily left her father's dwelling, acquired a domicile, or at least a quasi-domicile, in the place of Loire before the wedding. It cannot be said, the advocate contends, that the plaintiff's father maintained his domicile in the county of Loire at the time of the wedding, but rather acquired a quasi-domicile in the parish of Saint Peter of Chaillot, since he remained there for more than a month. For, as Cardinal D'Annibale teaches in *Summa par.* I, § 84, "a quasi-domicile is acquired, just as a domicile, by intention and fact; by the intention of remaining somewhere for a greater period, at least a significant part of a year; therefore, if someone comes to a place as a traveler; or for the purpose of a lawsuit or the conduct of business, and departs after these matters are concluded; even if, contrary to expectation, he happens to stay there for a year, a quasi-domicile is not truly acquired there." However, it is clear from the testimonies of witnesses that the plaintiff, along with her father, were in Paris and in the parish of Saint Peter.

[*Latin ed. p. 13*]

PARISIAN. He testified that he went once to celebrate a marriage, but immediately left after it began; therefore, it is clear that he could not have acquired a domicile there, the Advocate argues. Furthermore, he concludes that the resolution of the Sacred Congregation of Councils (S. O. C.) of February 22, 1631, is relevant to our case. – "The Sacred Council of Trent judged that the following declaration should be made in general terms: 'A man and a woman, departing from the place of their residence, without the intention of abandoning it, and going to the place of another parish solely with the intention of celebrating marriage there, and not of establishing a domicile, have contracted marriage before the parish priest of that place.

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The question is to be declared by the Sacred Congregation whether such a marriage is null or valid.' – On February 22, 1631, the Sacred Congregation, according to what is proposed, judged it to be null." The Advocate, proceeding to the second point of his argument, seeks to prove that no delegation was given by the parish priest of either of the parties, nor by the Ordinary of Andegaven. He states that in this case, it should not be presumed that a delegation was granted, but rather it must be proven. And, as the Advocate argues, it must be noted that in the Archdiocese of Paris, it was customary for parish priests to entrust marriage matters, as if by their own right, to the first vicar; a custom that is confirmed by the Vicar General of Paris, in a letter sent to the Most Reverend Cardinal Prefect, who wrote: "In this Diocese, it has been the custom that marriage matters are often, and almost as a matter of right, handled not by the parish priest, but by the first vicar." With these premises, the defender of the actress notes that, to demonstrate that no delegation was given by the parish priest of either of the parties, the testimony of Canon Perdreau, who blessed the marriage, and of the priest Sabatier, who at the time of the marriage (and is present now) served in the parish of Saint Peter as the first vicar, would suffice. Indeed, it is absolutely clear that both concealed that a license had been given. Indeed, Canon Perdreau confesses that he requested and obtained permission to assist at the marriage from the parish priest of Saint Peter, and this is confirmed by Father Sabatier, who...

[*Latin ed. p. 14*]

14. PARISIAN. He oversaw all the matrimonial arrangements: "Mr. Perdreau was delegated, he said, by Mr. the Curate himself, or, if he had been absent, I myself would have delegated Mr. Perdreau." The advocate observes, "It cannot seriously be objected that the parish priest of St. Peter was delegated either by the parish priest or Ordinary of Burdigala, or by the parish priest of the bride, or by the parish priest of the groom, or finally by the Ordinary of Andegaven, for, at least in cases of doubt, the validity of the marriage must be upheld." First of all, the advocate states, it must be noted that the priest Sabatier, the first vicar of St. Peter, confessed: "I do not know that they, the parish priest or the proper Ordinary, gave any delegation; moreover, the records show nothing, and I always note a delegation." And when questioned by the Judge: "Did you communicate your concerns about this matter to Mr. the Curate of St. Peter, or to the parents or friends of the bride or groom?" He replied: "I had nothing to say, since I had neither doubt nor fear, and I believed there was a real domicile at the address indicated." And if the parish priest of St. Peter had received permission from some parish priest or Ordinary of the contracting parties, he certainly should have informed his first vicar, and it is inconsistent that he maintained silence, and noted nothing at all about the marriage in the marriage book. Furthermore, the advocate continues, not only the groom,

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but also the father of the bride, the widow de la Moricière, Countess de la Ferronays, who were involved in the marriage, and all the other witnesses, never heard that a delegation had even been requested. Moreover, the advocate argues, there is no evidence from the side of those who could have granted a delegation, that at least one delegation was truly given. Indeed, the Cathedral Parish Priest and the Ordinary of Burdigala were not the proper authorities, because the father of the bride had departed from Burdigala and would not return; therefore, if he had acquired a domicile there, he had now lost it; but moreover, they deny having granted permission. It is evident that the parish priest of the bride did not grant permission, as can be seen from the testimony of the priest Soulard, who was the vicar at the time of the marriage.

[*Latin ed. p. 15*]

PARISIEN. Loire, who, if a delegation had indeed been granted by the parish priest, now deceased, would certainly have known this, yet confesses that no permission was granted, and that both he and the parish priest at that time were convinced that Parisien was the proper parish priest. Furthermore, it is clear that the parish priest of the bride did not grant such permission, because, if he had, the groom would certainly have known it, yet he affirms that he knows absolutely nothing of the matter. Finally, the priest Rocher, who in 1878 was the assistant priest of La Cornuaille, confesses that he is completely unaware of it, and yet, if a delegation of this kind had truly been granted by the parish priest, it would not have been possible for assistant priest Rocher to be ignorant of it. Even the current parish priests of Loire and La Cornuaille affirm that they have never heard of any such permission being granted, nor is there any indication of it in the parish records. Finally, the Bishop of Andegaven denies having granted such a delegation; this is also unknown to the Vicarius Generalis. Therefore, the current parish priest of St. Peter, after considering all of these things, confesses: "No delegation was given. There is no mention of a delegation in the document; and it is too important not to be mentioned in the document, especially Mr. Sabatier, who has been the first assistant priest for a very long time." But, the lawyer exclaims, since the nullity of the marriage is clearly evident, we are astonished that the Bishop of Andegaven defends its validity. On July 30, 1895, he requested the Prefect of the Sacred Congregation, by telegraphic letter, that the resolution of the controversy be postponed "due to new and very serious reasons, which I will explain in letters that will follow shortly." But, according to the advocate, these new and very serious reasons are of no importance. Moreover, he notes that it is not understood how the Bishop can assert that a scandal would arise from the declaration of the nullity of this marriage, since everyone easily perceives the difference between a sentence of nullity of marriage issued by ecclesiastical authority, and that of divorce pronounced by a civil tribunal.

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For the Church does not dissolve the conjugal bond, but declares that it never existed. And if the faithful were truly so ignorant, it would be the duty of the Bishops and priests to instruct them.

[*Latin ed. p. 16*]

16. THE PARISIAN. The Bishop then adds: "These are the impressions, the scandals, of all classes of Angevin society, even of the close relatives of Madame Louise, who, with very few exceptions, have ceased to see her and judge her with extreme severity." In response to this assertion, the defendant presents a protestation signed by the military tribune Gibert, approved by the majority of the actress's relatives, which reads as follows: "We protest with indignation against this most serious accusation that one dares to make against a woman. We see and surround our niece; my sisters and cousins have never ceased to love her, to pity her, to esteem her, to receive her, entrusting their daughters to her, and regarding her conduct, her behavior, her morality, they have the esteem that she deserves, and none of us has permitted herself to blame her for having, in her circumstances, addressed herself with confidence to the Church. The entire society has been grateful to her for having risen above the calumnious attacks that certain individuals, motivated by serious financial interests, had reason to make against her." Furthermore, almost all of the actress's relatives subscribe to two letters transmitted to the Most Eminent Cardinal Prefect, proclaiming: "No member of her family, the actress, has ceased to see her, and has not had to deplore the disorderly life to which he [the Bishop] has alluded. His Eminence must have been misled, and his good faith surprised." The Bishop admits that it is probable, and the defendant, Aloisia, concludes, that the Archbishop of Bordeaux had sent a delegation, or even more, because he says: "The General de Rochebouët was particularly connected" with him. But, with due reverence for the Bishop, he observes that it is a fundamental principle of law that one immediately loses one's domicile when one departs from a place with no intention of returning. Indeed, the Duke, when his daughter was married, had left Bordeaux two months ago with the intention of not returning.

OBSERVATIONS OF THE DEFENSE.

SACRED BONDS. The defender of the sacred bonds argued with all his might that she had maintained her...

[*Latin ed. p. 17*]

PARIS. May 17th, according to the decree of the Council of Trent. The form established by the Fathers of the Council in Session XXIV, chapter V, concerning reforms, reads as follows: "Those who contract marriage in any other way than in the presence of a parish priest, or a priest, with the license of the said parish priest or ordinary, and with two or three witnesses, the

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Holy Synod declares to be entirely incapable of contracting such a marriage, and decrees that such contracts are void and null, as it makes them void and null by the present decree." Nothing else, which could even slightly touch upon the present controversy, is found in the celebrated decree, except for the word "although." However, the defender of the sacrament states that, if we wish to safely understand the mind of the Fathers of the Council, it is sufficient to carefully read the discussions among the Fathers concerning the matter, which are clearly reported by Cardinal Pallavicino in his *Historia dei Conc. di Trento*, Vol. 22, No. 17. But the meaning of the Fathers of the Council, according to the opinion of the judge of Paris, who declares the present marriage to be clandestine, is understood according to the speaker; it is, however, properly explained by the Bishop of Angers, who refuses to include in the catalog of clandestine marriages the marriage of the young people Aloisia and Francis, with the consent of the parents of the betrothed, men of wealth and distinction, which was celebrated in Paris, in the church of Saint Peter of Chaillot, on May 7, 1878, in the presence and with the signatures of prominent citizens of France, including those of royal blood. In order that it may be immediately apparent how far the judge of Paris deviates from the truth, the defender of the marriage reports the facts upon which the judgment is based, facts which the judge himself recounts as follows: "We note that, at the time of the marriage contracted in the church of Saint Peter of Chaillot, Francis resided in the parish of Cornuailles, and Aloisia in the parish of Loire, in the Diocese of Angers; Aloisia indeed enjoyed a simple residence in the territory of the parish of Saint Peter, but in the manner of a traveler passing through, with no intention of remaining, and therefore neither of the betrothed had, at that time, a domicile or quasi-domicile in the aforementioned parish of Saint Peter."

[*Latin ed. p. 18*]

18. PARISIAN. It is stated that no delegation was present, either from the Ordinary or at least from either of the parish priests, concerning this marriage. Therefore, the Parisian argues that the foundations of the judgment are as follows: I. Aloisia, or her father, at the time of the marriage, had their domicile of habitation in the parish of Loire; II. Francis had, at that same time, his domicile of habitation in the parish of Cornuaille; III. The Council of Trent, Session XXIV, Chapter 1, concerning reforms, established an impediment to the validity of marriage, such that the parish priest of the church of Saint Peter in Chaillot could not lawfully and validly receive the matrimonial consent of Aloisia and Francis without a delegation from the parish priest of Loire or Cornuaille, or from the Ordinary of Angers; IV. Finally, the aforementioned delegation was required. However, the Parisian judge, according to the sacramental tutor, is entirely mistaken. And in truth, it is violated from the very beginning: for no one denies that Caietan, whose domicile Aloisia followed, had a political, or electoral,

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domicile in his ancestral castle, commonly called Vallière, in the region of Loire. The difference between a political domicile and a domicile, or quasi-domicile, of habitation, which is the one under consideration here, is the difference between the finite and the infinite. It is commonly the case that someone may possess property in a town, own a house, pay taxes, and exercise the right to vote and other political rights, without having a domicile, or quasi-domicile, of habitation there. But it is a fundamental principle of law that such a person is not subject to the parish priest of that place, before whom he can validly contract marriage. Furthermore, the defender argues: Caietan, a general of the military, throughout his life devoted himself to military service, and therefore, a domicile of habitation, either in one place or another, due to his service, he never acquired in the region of Loire. For example: when Aloisia was born, her father was in the region of Beauvais. Indeed, in the judicial record it is stated: "She (Aloisia) was born in the Diocese of Beauvais." And certainly not in the region of Loire.

[*Latin ed. p. 19*]

PARISIAN. He enjoyed the comforts of his home while holding the reins of power, and for four years, until March 15, 1878, he commanded troops in Burdigalae. However, to Aloisia herself, he testified: "I have never left the family home since leaving the Toule convent in 1875. I left Bordeaux with my father on the 16th or 17th of March, 1878." Furthermore, the defender notes, it cannot be objected that Caietan had sent a notification to the military authorities two months before the marriage celebration, and had immediately established a residence in the Loire region. This is forbidden by his own will. No one will believe that a man who had held the highest honors throughout all of Galliae, an "ancien Président du Conseil des Ministres," a former "Ministre de la Guerre," who had old associates, all friends and relatives, in Lutetiae, Paris, and who had been accustomed to living in large cities for so many years, would have wished, at the age of over sixty-six, to withdraw to a rural area, where, as far as I know, he had never resided in his youth, to live a solitary life, deprived of the comforts to which he had become accustomed. Moreover, a residence is established by intention and action. Therefore, these two points must be carefully considered if we wish to ascertain the truth. Furthermore, the speaker continues, the public records clearly demonstrate his intentions. Moreover, Caietan received a response from the Ministry of War on March 15, 1895: "It appears from the investigation that, according to your request signed in Bordeaux on March 15, 1878, you designated Paris as the place to receive the compensation allocated to your new position." In the civil marriage records of Burdigalae, it is written: "Mlle Louise, residing in Paris, with her father, at 28 Cours la Reine, formerly of Bordeaux." Similarly, in the Parisian civil marriage records, it is stated: "Louise... residing with her father in Paris, at

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28 Cours la Reine, formerly of Bordeaux." In the civil marriage record, it is written: "Louise, born in Beauvais, residing in Paris, at 28 Cours la Reine, formerly of Bordeaux, with her father."

[*Latin ed. p. 20*]

20. The marriage record contains the following: "Louise, residing at Cours la Reine 28, from this parish, and previously from Bordeaux." This, the defender of the sacrament exclaims, are undeniable facts. However, Caietan, attempting to undermine the declaration of domicile made to the Ministry of War, stated: "Non-commissioned officers and soldiers are required to declare a domicile, pertaining to a recruitment office; disciplinary penalties are applied to them if they change their domicile without notifying the authorities. This is a different situation for officers. When a General is transferred to the reserve, the Minister asks him where he wishes to have his salary paid from then on. This is a simple financial formality." Furthermore, Caietan himself added: "The Minister, having deemed it necessary to know my domicile in order to transmit his instructions to me in the event of mobilization, then requested, through the proper channels, where I should henceforth be written to." From these statements, the speaker observes, it is clear that the law requiring the declaration of domicile affects general officers no less than the lowest soldiers. And this must be maintained, unless the Minister's letter and the response given by Caietan suggest otherwise. However, the defender of the bond argues, actions speak louder than words. Indeed, in the prenuptial contract, it is not only written: "Louise, residing with Mr. the General Count, her father, hereinafter mentioned in Paris, and domiciled in Paris," but also, according to the testimony of the Count himself, the ancestral castle of Vaillière, ceded by Caietan to the betrothed, was involved. This contract was concluded immediately after Caietan's departure from Burdigala, that is, two months before the marriage celebration, before Mr. Caron, "notary at Candé-Maine et Loire." As for the Count Caietan having reserved a room for himself; indeed, even "a portion of the land of the Château de Vallière," the speaker argues, can be reconciled with political considerations, but not with the domicile of habitation. It also grieves the defender that Aloisia presented not the complete copy of this contract, but only the preamble, with certain articles suppressed. In the articles,

[*Latin ed. p. 21*]

PARISIAN. 21 precious items and concerning the cession of the castle and the future marriage, as well as the residence of the Count of Caiet, are perhaps contained therein. However, the defender of the sacrament maintains that the Count of Caiet, from March 16, 1878, when he departed from Burdigalae, has habitually resided not in the Loire region, but in Lutetiae Parisiorum. Both the Count and his wife resided and reside in Paris. The

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witness Alphridus de Rorthays testifies: "Mr. le General was to reside with his children, Aloisia and Francisco, and he did not wish to secure this apartment before the marriage, in order to choose it to the liking of all. It was at the beginning of the Paris season, around autumn, that this apartment located on rue de Ponthieu had to be secured." Furthermore, the Parisian Archbishop, while conducting the investigation, mentions Aloisia of our diocese; Aloisia, in the judicial examination, responds to the question about her residence: "70 rue de Ponthieu," and the Count, in his letter to the court, states: "Paris, February 4, 1895." A most clear argument, the advocate for the marriage continues, is found in the parish marriage register, in which it is written: "In the year 1878, on May 7, after the publication of a notice made in this church, in that of la Cornuaille, diocese of Angers, and in that of St. André, diocese of Bordeaux, having seen the dispensation for two other notices, having seen the certificate of the civil registrar, etc." However, there is no trace of any publications in the parish of Loire. It is unlikely, the advocate observes, that the parish priest of St. Peter of Chaillot, Joseph Sabatier, a former vicar, specifically designated for marriages, would have failed in such an obvious matter, and that the marriage publications were carried out in all parishes except the parish of Loire, in which Aloisia had her residence. With so many and such weighty arguments, which exclude the alleged residence of the actress in the parish of Loire, the defender of the marriage states, all those who assert Aloisia's residence in the parish of Loire must be dismissed. These are all general statements of residence, or rather, opinions, rather than testimonies.

[*Latin ed. p. 22*]

22. The defense argues: It is the duty of witnesses to recount events with all circumstances and details; but it is the proper function of the judge to assess those events and determine their legal value. Furthermore, there is such confusion in the law regarding domicile, quasi-domicile, political domicile, civil domicile, domicile for the purposes of Roman law, domicile for the purposes of canon law, and in the common understanding of the term, that any witness can easily attribute a thousand or none at all to anyone's domicile. Moreover, the defense continues, the military commander Caietan resided for four full months in the parish of Saint Peter of Chaillot. Aloisia herself testifies: "We returned to Paris on March 23rd." And Maria Roch, lady of the Diversorii da Palais, testifies: "Mr. the General left us on July 23rd, 1878, and did not return." Whoever considers the delay of nearly two months before and more than two months after the celebration of the marriage, the defense argues, must have before his eyes the declaration of Benedict XIV to the Archbishop of Goan, stating that, in order to acquire a quasi-domicile for the purpose of contracting a valid marriage, a period of at least one month is required. Therefore, the defender of the sacrament continues, in accordance with the teaching of Benedict XIV, John Perrone in

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De Matrimonio Christianorum, book 2, section 1, chapter 6, article 5, page 278, and Peter Gury, in *Theologia Moralis*, treatise on marriage, number 846, teach that a delay of one month is sufficient for a valid marriage to be contracted. It could also be said, the orator contends, that when Aloisia contracted the marriage, she had no proper parish. For at that time, she did not have a domicile of residence in the parish of Loire; nor did she maintain a domicile in the Bordeaux parish of Saint Andrew, because she had left with the intention of not returning. Therefore, she could validly and licitly contract the marriage before any parish priest. The defense is not moved by the testimony of the parish priest of Saint Peter of Chaillot, who says: "Obviously not, we did not think that Mr. the General and Mademoiselle his daughter could be without a domicile; otherwise, we would have requested a delegation." For...

[*Latin ed. p. 23*]

PARISIAN. Furthermore, the permission of the Ordinary in marriages of vagrants, as prescribed, is not valid under penalty of nullity of the marriage, as can be seen in Sánchez De Matrim., book 3, disputation 2, no. 17; this is useless when those entering into marriage are not truly vagrants and do not have uncertain abodes, but are known in the city, as the same Sánchez teaches in the aforementioned passage, no. 8. Finally, the defender of the bond concludes that the judge presumed that at the time of the marriage, the betrothed was still subject to the parish priest of La Cornuaille, stating: "Considering that at the time of the marriage, which was contracted in the church of Saint Peter of Chaillot, Francis had his domicile in the parish of Cornuaille." But Francis lost his domicile in the parish of Cornuaille more than a month before entering into the marriage bond. With these considerations, the question was raised as to whether the judgment of the Parisian court should be confirmed or overturned in this case. RESOLUTION: The Sacred Congregation, after deliberation on January 25, 1896, decided to respond: The judgment should be confirmed. POINTS TO BE CONSIDERED: I. For the purpose of marriages, the domicile of children is considered, by law, to be in the place where the father of the family has his dwelling. II. The father of the family does not lose the domicile once acquired, even if he frequently leaves the place, even for a long time, unless he leaves with the intention of not returning. III. Only those who, having abandoned their domicile, use uncertain abodes, seeking where they may find lodging and where they may reside, should be considered vagrants. IV. Betrothed persons are considered to have had their own domicile in the place where they had their dwelling and the majority of their possessions, with the intention of remaining there permanently. V. Quasi-domicile is acquired in the same way as domicile, namely by will and intention; thus, if someone

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requests a place, for the purpose of a lawsuit or business transaction, quam-

[*Latin ed. p. 24*]

24. PARIS. It is understood that, contrary to expectation, he remained there for a year, as if not acquiring a domicile there. VI. This is the jurisprudence of the Holy Congregation, namely, that a marriage cannot validly take place between a man and a woman departing from the place of their residence without the intention of abandoning it, even if they request the parish with the intention only of contracting the marriage there. VII. A marriage was celebrated in Paris by a minister of the Church, without considering the question of a domicile acquired, or, at the very least, without a delegation having been granted by the parish priest or Bishop of the spouses; regarding which, nothing was done.

●● <S^~ PRATO. TRANSACTION. On January 25, 1896. Session 24, chapter 5, Concerning the validity of marriages. SUMMARY OF THE FACTS. After the Church of Prato was raised to the dignity of a Cathedral Church by a Bull of Pope Innocent X, and the Church of Pistoia, also principally united, the Bishop began to claim the free collation of benefices, which had hitherto been conferred, with prior presentation by the clergy, from the canons of the collegiate Church of Prato. But the Prefect of the College, who at that time, under the name of canons, exclusively exercised this right of patronage, strongly resisted, arguing that such benefices, being founded on the goods of this Church, or at least of the territory of Prato, belonged to the right of patronage of the same Church. On the contrary, the Bishop insisted that the collation of benefices was devolved upon him by reason of the dignity of the Cathedral Church to which the Church of Prato had been raised; therefore, it was no longer subject to the Prefect of the College, but was immediately subject to him. This controversy became the seed of discord, and in order to permanently quell these disputes, a plan was devised to establish a Transaction between the Bishop and the Canons.

[*Latin ed. p. 25*]

PB. ATEN. 25 tenses. – It is beyond doubt that this transaction was deliberately initiated, and that it has led to the present situation, as evidenced by the diligent study and examination of the matter; the following distinguished men were present when this agreement was entered into, on May 10, 1743: namely, the Prelate Ginori, the Bishop of Fesula, and the Priest Martin, Apostolic Nuncio to the Duke of Etruria. With regard to our matter, it was agreed in the convention that certain benefits, specifically named, should be freely conferred by the Bishop, while others should not be conferred except with the prior presentation of a cleric by the Chapter, but under this condition: "Provided, however, that those to be chosen and presented to the aforementioned canonries and chaplaincies, both by the

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Bishops and by the canons, must be and shall be citizens of Prato and natives of that city." Furthermore, the following clause was added: "Saving always and reserving the principle, purpose, and end of the present instrument, with the approval of the Apostolic See, as may be required by law, which is not doubted." Whether or not such Apostolic approval was obtained is not certain from any document; whether it should be presumed to have been obtained, given the long-standing observance of the convention, is the subject of debate. In truth, the Bishop testifies that the convention has been observed until our own days, except for perhaps four or five instances in which a benefit was not conferred upon a citizen of Prato in the last 60 years; and no one contradicts this. However, certain benefits, which were determined in the convention, have been abolished by the usurpation of the civil government. Meanwhile, it happened that a certain benefit became vacant, which had been endowed by the aforementioned Ser Lelio Buonamici, and which the Bishop had decided to confer upon a citizen who was not from Prato. However, this conferral was opposed by Canon Robert Cipriani, who presented a petition in court, "N Util trau sent," and also appealed to the Sacred Congregation, urging the observance of the Transaction, and declaring that nothing had been enacted contrary to it. However, the Sacred Congregation considered it appropriate to respond on January 27, 1894: "From what has been presented...

[*Latin ed. p. 26*]

26. The prebend was to be a place of mortification – nothing superfluous was to pass – and of provision according to the canons, in accordance with the will of the Bishop and Chapter. For the Bishop, when consulted, replied that he saw no valid agreement, due to the lack of Apostolic approval. The Chapter, duly assembled to express its opinion on this matter, deliberated and decided that the disputed agreement could not be valid, with nine of the canons holding this opinion, and three dissenting. Again, the matter was brought before the Sacred Congregation of Councils, requesting that the general question be re-examined, namely, whether the agreement of 1743 was still in force, and to what extent the Bishop and Chapter were entitled to abrogate it. The Chapter was duly informed to offer its observations, and replied that it did not wish to take part in the judgment, but nevertheless allowed each canon to suggest reasons by which the intention of the Chapter could be demonstrated.

A SYNOPTIC SUMMARY OF THE CANONS' DEFENSE:

They maintain that the agreement should not be upheld, since it lacks Apostolic approval, which seems necessary in this matter. For it involves imposing a new burden on benefices that have been properly established, contrary to the express will of the law, namely, "that ecclesiastical benefices

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be conferred without diminution." The necessity of Apostolic approval is repeated by the Bishop from another point of view, namely, from the perspective of alienation, as contained in the agreement, as Ferraris teaches – *Prompt. B* there, Alienation – art. 4, n. 12: "Alienation concerning ecclesiastical property cannot be carried out without Apostolic approval, and if it is carried out, it can be revoked with the reservation of said approval, and there is room for repentance." For, the Bishop argues, the parties cannot obligate their successors or the Church itself, unless the authority of the Pope is added, citing these words of Ferraris, *I. cit.*, n. 22: "A personal agreement concerning ecclesiastical property or rights becomes real and obligates successors if it has been confirmed by the Pope, with certain knowledge."

[*Latin ed. p. 27*]

PRATO. On the 27th, the Canons assert that the Pope never truly ratified or confirmed this agreement, not only because of the absence of any instrument to that effect, but also because of the clause added to the act, which states "subject to the Apostolic approval, as is required by law," which they do not believe was obtained. Therefore, they explain that the act was not approved, and they consider such approval to be unnecessary. Furthermore, they do not believe that the Apostolic Nuncio, in his own person, represented the Pope, and that the act was confirmed in his name; for this is nowhere expressed, but rather is openly excluded by the clause by which the act was to be subject to the approval of the Pope, as this was required by law. Finally, the Bishop notes that, due to pressing circumstances in recent times, the observance of the agreement regarding the conferral of benefices has been postponed more than once, even to clerics not from Prato and not originally from this city, because it was necessary to appoint more worthy and deserving individuals for the benefices, even if they were not from Prato or originally from this city. Therefore, the Bishop fears that the disputed agreement may not be observed in this regard; and that, in such a scarcity of priests, he may not be able to attract priests not from Prato to undertake more burdensome duties and more difficult priestly tasks, such as that of a teacher in the Seminary, promising them, in return for so much labor, that he would grant them some canonical benefice. The Bishop testifies, "...as happens today, in which the three most capable professors of the Seminary are those who would be excluded from competing for the benefices included in the agreement." Finally, the Bishop denies any force to any observance or custom, because "what is defective from the beginning cannot be made valid by the passage of time." On the contrary, Canon Cipriani argues that nothing is lacking for the full observance of the agreement. First of all, he believes that the Apostolic approval was not lacking, since the Apostolic Nuncio, by his presence, sufficiently represented the authority of

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the Pope. For, as such, he possessed the power to...

[*Latin ed. p. 28*]

28. PRATO. The advocate argued with authority regarding the proposed agreement and the stipulation in the contract, explicitly named in the text. Therefore, the opposing party argues that those words – (which are not believed) – mean that it is not necessary to obtain further papal approval, after the Holy See has been present at the act through its messenger. However, the canon insists that, since this agreement is to his advantage and involves more than one hundred years of observance, it requires no other papal approval, since this is presumed, as was decided by the Holy Rota "in Colonia" on April 29, 1733, before the Most Eminent Congregation, namely, "that papal approval should be presumed after the lapse of one hundred years in the alienation of Church property if the subsequent observance conforms to it." The advocate notes that such an agreement has truly been observed, provided that the benefices are still conferred partly by the Chapter and partly by the Bishop according to the law established in the agreement. Furthermore, the right of the citizens of Prato is also recognized, so that for one hundred years, only citizens of Prato, born in this city, have received such benefices. If, in the last 50 years, there are four exceptions, the advocate points out, these must be due either to the absence of some citizen of Prato who could aspire to the benefice, or to the silence of those whose interest it was to defend their rights. Moreover, he observes that it is not surprising that the Chapter votes against the agreement; for the canons, in number, are more numerous than those who enjoy benefices not included in the agreement, and some are not at all concerned about the agreement, or they desire it to be abolished, so that access to canonries may be open to non-citizens of Prato. Finally, he points out that the Bishop's fear is far from the truth, namely, that he would not have enough resources to remunerate the more deserving priests of the diocese, if such benefices were to be conferred only on citizens of Prato; for, the advocate says, there are certainly other benefices, either canonical or lucrative, available.

[*Latin ed. p. 29*]

PRATO. On the 29th, priests who have deserved well of the Diocese are to be granted a suitable salary. But the Advocate, presenting further arguments, insists more urgently on this point, namely that in the Agreement, truly no new rights were established, nor were new burdens imposed on the benefices, but rather rights already established, burdens already inherent in the benefices, were recognized, solemnly and firmly declared. From this, he presents a certain list from the year 1690, showing the individual canonical holders of the benefices, so that it may be clear that in the benefices, even those included in the Agreement, only citizens of Prato, and those originating from this city, had been instituted. Furthermore, it is

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necessary to distinguish two parts in the Agreement: firstly, it establishes to whom and in what manner certain benefices pertain; secondly, to whom they are to be conferred. As far as the first part is concerned, no controversy has arisen, but it must be diligently noted; this point is indirectly attacked by the Bishop and the Canons who contend that the Agreement is null. For, they claim that in order to prove that citizens of Prato, originating from this city, have not acquired any right from the Agreement, the Agreement must be considered to lack papal approval, and therefore to be null. Indeed, this would seem to be deduced from the necessity of a Papal Decree in this Agreement, in which new burdens are assigned to the benefices. However, it is clear that this Decree is lacking, since those who entered into the Agreement believed that it was not required, so that no document exists to confirm this. Therefore, it does not seem to support the observance of even a hundred years, when it is certain that a Papal Decree did not have a place; as decided by the Sacred Congregation of Councils in the *Piacentina* on September 23, 1777. But, on the contrary, it does not seem entirely certain, but rather highly doubtful, from the appearance of the facts, whether a Papal Decree was appended. However, in cases of doubt, a Papal Decree is presumed after the lapse of thirty years; thus, Felin in chapter *Alhericus* "on testaments," number 4, Rolan, cons. 99, number 33, *Hb.* 2, the Sacred Rota in decision 470, number 4, before Coccino, and decision 91, before Durano; and in Ca-

[*Latin ed. p. 30*]

30 PRATO. March 6th. Regarding the Parochial Benefice, § Against. And indeed, with good reason, due to general principles of custom and prescription. The validity of the Transaction appears all the more urgent, since it is sufficiently clear that no new burden has been imposed on the benefice, but rather an old one has been recognized and declared. Indeed, by its very nature, a Transaction serves to clarify doubtful and disputed rights; as De Luca demonstrates in *De Feudis*, Discourse 47, § 9, and as D'Annibale teaches in II, § 538, stating: "And it is truer that a Transaction is declarative of the law, not translative." However, the validity of the Transaction does not preclude the possibility that the Ecclesiastical Judge may rescind it, either in its entirety or in part, when it has resulted in serious harm to one of the parties; as can be seen in Reiifenstuel, in the Title on Transactions, § 52 and following. Therefore, it was left to the Fathers to deliberate whether the force of the Transaction, due to changed circumstances, should be rescinded, at least with regard to that part which limits the freedom of collation, concerning the promotion of persons. Hence, the following question was posed: Whether the Transaction of the year 1743 should be maintained, both with regard to the right of the Bishop and Chapter to confer benefices, and with regard to the right of the citizens of Prato to obtain the same, in this case.

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RESOLUTION: The Sacred Congregation, having considered the matter, on January 25, 1896, decided to respond: Affirmatively; but so that, considering the particular circumstances, and if those circumstances persist, even external parties, with all other things being equal, may choose to favor the citizens of Prato, having made an agreement with the Holy See.

[*Latin ed. p. 31*]

31 FROM LA SERENA AND OF JAMES OF CHILE, CONCERNING EXCARINATION. January 25, 1896. Session 23, chapter 8, Concerning Reforms. SUMMARY OF FACTS. Germanus Donoso, a priest of the Diocese of La Serena, the subject of this controversy, was born in the city of St. James of the same Chilean Republic, in the year 1848, where his parents had established their home for a long time. After the death of Germanus' father, the Prelate Donoso, the actor's paternal uncle, and the Bishop of La Serena, took the nephew with him, so that he might be instructed in ecclesiastical disciplines in the seminary of La Serena, under his own eyes and at his own expense. - After the death of the living Prelate Donoso, who had expended a great sum of money for the good of the Diocese, and who, in his will, bequeathed property to the seminary, Germanus was initiated into the sacred orders by Bishop Orrego, his successor, by reason of his residence and in the title of service to the Church. - Therefore, after having relinquished his professorship, he fulfilled this duty in the seminary for ten years, and also performed other duties, having served as a fiscal promoter and as a defender of the marriage bond on several occasions, as the occasion demanded. But after the death of his mother in the year 1875, Germanus, considering that nature itself commanded him to take care of his family, and especially of his sister who had reached marriageable age and who resided in St. James, gave notice to the seminary and to the city of La Serena, and, having obtained permission from the Ordinary, he went to the city of St. James, where he has resided for twenty years now, entirely dedicated to the instruction of young people, while also providing for the sustenance and other necessities of his own family. During this time, Germanus has not visited the city of La Serena for even a single hour, since he had no intention of returning. - Therefore, in order that no impediment might stand in the way of his settled residence in the city of St. James, he requested from the Ordinary of the Diocese of La Serena a grant of excardination, so that he might be assigned to the clergy of the Archdiocese of St. James, which Arch-

[*Latin ed. p. 32*]

32. Concerning the matter of SERENA and the Bishop of S. IACOBI of Chile. The Bishop had a request. However, the Ordinary of Serenensis considered it necessary not to grant the request of the petitioner. The German priest presented several reasons, and especially emphasized his poor

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health, which would be gravely endangered in the city of La Serena. Furthermore, he recalled that he was born in the city of S. Iacobi, that his family still resided there, and that his work was greatly needed there, especially by a certain sister, afflicted by a serious illness, who daily required assistance and comfort; while he himself was engaged in the priestly ministry in two parishes, with the spiritual advancement of the students and the praise of the Superiors. The Ordinary of Serenensis, on April 18, 1894, issued a decree in which he denied the request, considering the aforementioned reasons to be of great importance; because the priest Donoso had been promoted to the sacred orders with the title of "Servant of the Church," because many parishes in the diocese lacked a pastor for the service of the faithful; because it is easily possible to find in the vast diocese a region where the air is not less healthy than that which he could enjoy in the diocese of S. Iacobi; in that region, he could assist his own sister in her poverty. However, the petitioner, not agreeing with the decree of the Ordinary of Serenensis, offered prayers to the Most Blessed Father, so that he might graciously, by his supreme authority, grant his request. The prayers, after being presented on December 12, 1894, first to the Ordinary of Serenensis, and then to the Archbishop of S. Iacobi; the latter, transmitting the decree, also noted that "letters of excardination given by my predecessors to some priests have caused damage to this diocese, etc." Finally, the priest Donoso, having resided outside his diocese for a long time, had often been summoned by his Ordinary. "I must declare," he said. However, the Archbishop of S. Iacobi, after stating that it was clear to him that the petitioner was a native of that city, where his family still resided, commends the petitioner's request, saying: "It is certain that, with the permission of his Ordinary and with the faculties of this Curia, the entire priestly..."

[*Latin ed. p. 33*]

OF LA SERENA AND ST. JAMES OF CHILE 33, having exercised his ministry in this city, having resided there for almost twenty years, and that never anything adverse to him has been seen or heard."

Synopsis of the Matter: The Bishop of La Serena appears to have a just and reasonable basis for recalling the priest Donoso to the service of his Diocese, since, having been ordained with the title of service to this Church, he is bound by a closer bond of obligation to it. Indeed, the force of the title of service to the Church lies entirely in the nature of a contract, by which the Church promises a suitable support to the cleric, who in return promises his services. For this reason alone, the Sacred Congregation has not infrequently approved the title of sustenance for Germany, the title of diocesan service for Hungary and France, and so on, because such titles, although somewhat remote from the prescriptions of the Council of Trent, nevertheless have their force, for the due support of the cleric, in a contractual obligation: but it would be the case of a very salutary disposition if, at

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will, one of the contracting parties were to evade the obligation and infringe it with impunity. Furthermore, the Sacred Congregation has always been ready with its decrees and sentences to assist Bishops who compel clerics to undertake some priestly office in their Church, to which they are bound by the force of ordination: thus in one decree from Nancy, August 22, 1831. All the more so is this permissible when the Ordinary testifies to the scarcity of priests, as is stated in the case of the Ordinary of La Serena. In this sense, the Sacred Congregation responded in Toulouse on June 9, 1881, in Paris on January 17, 1886, and recently in Thebes on June 8, 1891.

IT SEEMS THAT EXCARINATION SHOULD BE GRANTED. On the contrary, the following reasons appear to support the denial of excardination: The German asserts that he left the city of St. James at the invitation of his Serenian Prelate, and that he has never deviated from that city in his heart. Furthermore, the priest notes that he and his father have spent many years in the Diocese of La Serena, and not idly. He recalls that he was then engaged in the instruction of young people.

EXCARINATION DENIED. Acts, Volume XXIX, p. CCCXXXVII. IT SEEMS. 3

[*Latin ed. p. 34*]

34. CONCERNING LA SERENA AND SAINT JAMES OF CHILE: It is known that those residing in the Seminary, and others engaged in various duties, were always treated with kindness by the Ordinary of that time, the Prelate Orrego. He states that his paternal uncle, the Bishop Donoso, constructed the Seminary at his own expense, and that he bestowed many other benefits upon this Diocese, both during his lifetime and through his will. However, the testimony of the Bishop of La Serena, namely, that "the priest Donoso had resided outside his Diocese for some time, having often been summoned by his Prelate," is not easily reconciled with the testimony of the Archbishop of Saint James, who affirms that Donoso resided in his Diocese "with the permission of his Ordinary and with the faculties of this Curia." Furthermore, the intention of the Bishop of La Serena in recalling the priest Donoso is clearly stated to be either to entrust him with the care of a parish or with the office of Instructor in the Seminary. Indeed, both of these offices seem quite unsuitable for the priest Donoso. For he himself confesses that he is entirely unsuited by his nature for parochial duties, and that he has no experience in them; and he states that he cannot undertake the office of Instructor in the Seminary of La Serena, because the atmosphere of the city of La Serena is entirely adverse to him and very harmful to his health, so that, from his stay there, he contracted an illness from which he has not yet recovered. Regarding all of these matters and other points raised in the controversy, he presented witnesses, and ordered them to be duly questioned, the testimonies of whom are recorded in the proceedings, and are most favorable to the intentions of the plaintiff. The

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witnesses presented were of the highest rank: the Dean, the Archdeacon, and the Doctor, the canons of the chapter of La Serena, and the Prelate Carter, the titular Bishop of Antedon. Moreover, the reasons presented by the Bishop do not appear to entirely support the decision against the priest. Firstly, if we were to recall the decisions of the Sacred Congregation of the Council, already cited, we must note that they do not approve of the intention of the Bishop of La Serena. For, without enumerating the specific circumstances of the case, it is sufficient to point out that the Sacred Congregation responded in this way because the matter concerned priests who were idle, vagrant, and lacking in resources.

[*Latin ed. p. 35*]

CONCERNING SERENA AND SAINT JAMES OF CHILE: Thirty [men] possessed of the qualities necessary to provide useful service, where the shortage of priests was extreme. On the contrary, the German priest does not utilize his health in such a way as to satisfy the Bishop's request; but where he presently resides, he certainly fulfills his priestly duties, when he performs the office of chaplain and teacher, explaining the rudiments of the Faith in secular colleges, namely, "Escuela Militar," "Application Practica," and "Liceo Amunategui." If, however, the German priest greatly prefers the residence of Saint James, especially because he can easily provide for the needs of his ailing sister, who receives little comfort from her husband, who is almost always away on business, it does not seem fitting to blame this to his brother priest, as if he were indulging the bond of blood too much; indeed, nowhere is it forbidden to a cleric to do so, provided that he does not neglect his priestly duties. With these considerations in mind, the question arose whether the Bishop's decree should be upheld in this case. RESOLUTION: The Sacred Congregation, after deliberation on January 25, 1896, decided to respond: "A petition should be made to the Most Holy Father for the dispensation of the priest Donoso from his ecclesiastical ties."

[*Latin ed. p. 36*]

36 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF THE ROMAN ADMINISTRATION, dated February 13, 1896. Joseph Bruned, a member of the Archisodality of the Precious Blood, established in the church of Saint Nicholas near the Tullianum prison, in the year 1894, fulfilled the office of Deputy for the burial of bodies in the burial chapel at the "Verano" cemetery, belonging to the aforementioned Sodality. At the end of the year, and according to the established method of administration, the member Bruned became indebted to the Archisodality in the amount of 85, 15 livres, for expenses incurred in his name. Accused by several superiors of the Sodality of an undue allocation of nearly 1000 livres, he persisted before the Guardians for a declaration of his innocence and for the confirmation of the presented accounting. Having exhausted this av-

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enue, he first turned to the President of the Sodality, who, however, unsuccessfully attempted a means of reconciliation; then to the Primicerius, and finally to the Cardinal Vicar of the City, Pro-Protector of the Archisodality: but, this recourse notwithstanding, the PP. Guardians, without any prior vote of the Congregation, suspended him from the roll of brothers of the Sodality until a new order. Having exhausted all means for obtaining a settlement, Joseph Bruned, through a written petition, appealed to the Holy Congregation of Bishops and Regular Canons, requesting that the due sum of 85 livres be returned to him, after a proper claim for the lost honor, and that the inflicted penalty of suspension be removed. SUMMARY OF THE CASE. SYNOPTIC DISCUSSION. DEFENSE OF MEMBER BRUNED. The accounting presented by the aforementioned member, which was presented ex officio, was supported by regular documents of receipts and disbursements, and from these, the accounts.

[*Latin ed. p. 37*]

In ROMA, it is clearly demonstrated that, in fact, he himself is the debtor in letters 85 and 15 against the Sodalitas, which has not yet presented anything to the contrary; indeed, a declaration was issued by the Secretary, commonly known as "delia Banca," in its informative communications, namely that the member Bruned, in addition to letters 83, has carried out various instructions given by the Treasurer of the Sodalitas, and that he must deliver letters 105 to the Guardian Trivelli: for these assertions are not proven, and furthermore, the Congress of the Banca ordered that the requested sum be paid, provided that the member Bruned returned the documents and objects of the confraternity, which he accepted conditionally, or with a prior retraction of the defamations, to be signed by the Superiors of the Sodalitas. Moreover, that these defamations against the member Bruned truly occurred, not only is it evident from the testimony of the Canon Prebendary, President of the Sodalitas, but also it is demonstrated by the deposition itself from office of the Deputy, inflicted before the statutory deadline, due to the honorable person's being wounded, and entirely without foundation. Finally, the motive for the temporary expulsion from the Sodalitas was the appeal to the Reverend Pro-Protector, and this was explicitly confessed by the Canon Prebendary himself, and is also partly admitted in the letter in which the aforementioned Secretary communicated the penalty imposed on the member Bruned. With these facts weighed, we come to the intended questions: I. Is the Council of Officials, commonly known as the "Banca Archisodalitatis a Pretiosissimo Sanguine," obligated to reimburse the member Bruned the sums of 85 and 15 paid by him? II. In what way, and in what amount, should the honor of the member Bruned, injured by the defamations published against him, be restored? III. Is the expulsion of

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the member Bruned from the list of brothers sustained in this case?

[*Latin ed. p. 38*]

38. In ROMANA, the Sacred Congregation of Bishops and Regulars, after deliberation on the 13th of February, 1896, responded as follows: To Question I: Affirmative. To Question II: This will be provided in the third [part]. To Question III: Negative, and Brother Bruned must also be reinstated, even with the approval of the rendering of accounts. RESOLUTION. "xO§£x". FROM THE HOLY CONGREGATION FOR RITES. CONCERNING THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD, JOHN BAPTISTE VIANNEY, PARISH PRIEST OF THE VILLAGE OF ARS. ON THE QUESTION OF WHETHER IT IS ESTABLISHED THAT THE THEOLOGICAL VIRTUES OF FAITH, HOPE, AND CHARITY IN GOD AND NEIGHBOR, AS WELL AS THE CARDIINAL VIRTUES OF PRUDENCE, JUSTICE, FORTITUDE, AND TEMPERANCE, AND THOSE THINGS ADJACENT TO THEM, WERE PRESENT IN A HEROIC DEGREE, IN THE CASE AND TO THE EXTENT OF WHAT IS BEING CONSIDERED? No one has ever detracted from the Venerable John Baptiste Vianney, who, having been made a shepherd of the flock from his heart, proved himself superior, in a manner worthy of praise, through the faithful fulfillment of his duties. This was demonstrated by his constant fervor of piety, with which, although born in humble circumstances, but with diligent parents, he prepared himself from a young age for greater and holier things; and even when occupied with laborious and arduous tasks, he scarcely allowed himself to be distracted, or when, guiding the plow and watching over the sheep, he brought provisions to the fields. This was also particularly demonstrated by the extraordinary sanctity with which he was endowed, which, once entered upon, he never abandoned, but diligently cultivated throughout his life; whether he devoted himself to studies in the Seminary, or, after being ordained a priest and acting as an example in all things, he was finally appointed to the parish of Ars, where he acquired a reputation that is beyond what anyone could believe. For in him was exhibited a singular example of all virtues. But above all else, it was a delight to him to inflict chastisement upon himself.

[*Latin ed. p. 39*]

CHAPTER X. OF THE RULES OF CONDUCT 39: It is necessary to act severely, to turn honors into contempt, and to endure hardships with joy. He was never more devoted to pleasing others than to showering benefits upon Christians; he strove to restrain, as far as his strength allowed, whatever might corrupt their minds; and he devoted himself entirely to whatever pertained to the service of the divine cult. And therefore, having dedicated himself completely to this way of life, he pursued it with such

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zeal that he gained such renown that it spread not only throughout all of France and the rest of Europe, but also throughout almost all lands, even those very far away. Thus, he acquired such a reputation that, although he served as a parish priest in a small village and never left it, the fruits of his evangelical preaching reached the most distant regions of the world. All these things are known, so that, because of the trust placed in him, many ecclesiastical dignitaries and numerous men of distinguished learning, under the guidance of Lacordaire, held solemn meetings and, after giving speeches, wrote letters to him, and entrusted themselves to his counsel on more than one occasion. Indeed, it is no secret that the actions and testimonies of this man have, in a certain sense, established the Venerable Vianney's name in growing fame, so that even those throughout the nations who were enemies of religion would acknowledge and widely celebrate this most upright man, and have not yet ceased to praise his extraordinary virtues after his death. However, among all, there is unanimous agreement: that no servant of God has ever dedicated himself to labor more diligently, so that he might fulfill the words of Augustine: "To pasture the flock of the Lord is the duty of love." He was able, deservedly, to render to those entrusted to him the words of the Apostle: "Be imitators of me, as I am of Christ." And during his life, he flourished with the gifts of the Holy Spirit, and especially with the gift of tears, the spirit of prophecy, the discernment of hearts, and that heavenly grace by which he always attracted large crowds to the tribunal of penance, and was supremely effective in converting wicked men to religion. Indeed, after the appointed time, on the eve of the Kalends of July in the year 1859, he surrendered his precious...

[*Latin ed. p. 40*]

40. According to the just rites, death is approached with reverence, or honor is paid at the tomb, and the ardor of souls is kindled; the monuments testify that both have increased with each passing day, due to the great miracles by which the remains of the servants of God still prophesy. Therefore, it is not surprising that the fame of this matter spread more widely, so that, scarcely five years after his death, the most distinguished cause of Vianney was diligently presented to the Holy Roman Church by the Bishop and the people. After proper investigations, with documents, as is customary, and other matters completed according to law, the Congregation readily recognized the virtues that had attained heroic perfection. The matter was properly concluded in three discussions: the first in a preparatory meeting, on the Ides of January, in the year 1894, convened in the house of Cardinal Lucidi, Bishop of Albano, and the Relator of this cause; the second in the preparatory meetings held at the Apostolic Palace in the Vatican, on the Kalends of February, in the aforementioned year of 1896; and the third in the general assembly held there before His Holiness Pope Leo XIII, on the day after the Kalends of June of the same year; at which time Cardinal

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Parocchi raised a question for discussion: Whether it could be affirmed that the Theological Virtues of Faith, Hope, and Charity in God and in neighbor, and also the Cardinal Virtues of Prudence, Justice, Temperance, and Fortitude, together with their associated virtues, were present in a heroic degree, in the case and to the extent that is being considered? The Most Blessed Father graciously acknowledged the opinions of all those present, both the Most Reverend Cardinals and the Consultor Fathers; and he also declared that this cause gave good hope; for the virtues that the Venerable Servant of God, John Baptist Vianney, exhibited throughout his life, shone brightly, and were made even more splendid by the unanimous testimony of others. However, the Supreme Pontiff reserved judgment on the declaration of his heroic sanctity for another time, with the divine favor. Today, however, on this Sunday, the ninth after Pentecost, during the solemnities in honor of Saint Anne, the most blessed mother of the Virgin Mary, whom the Venerable Vianney so greatly venerated, in order that the testimony of Apostolic authority might be added to the legitimate approval of the people, the Supreme Pontiff, the greatest among the names of Catholics, and especially of all the inhabitants of the region of Belligen and of France, believed that the desires of his people would be fulfilled, who seek a new patron of their city and their country, and of the heavenly realm.

[*Latin ed. p. 41*]

From the Sacred Rites, number 41, it was determined that it would be easier to attain greater graces. And with greater willingness, this was decided, so that the truly admirable example of virtues, presented by the Author of sanctity, God, in John Baptist Vianney, for others to imitate, would be more fitting for our present age; for, having undertaken this immortal work, so that, among the peoples of Gaul and other regions, the concord of faith and wills may be restored or fostered, and that religion may be a safeguard and a harbinger of public prosperity, the most wise Pontiff has long since devoted his entire mind to it. Therefore, having diligently performed sacred duties, he wished to summon the Most Reverend Cardinals Caietan Aloisi-Masella, Prefect of the Sacred Roman College, and Lucido Maria Parocchi, his Vicar in the City and Promoter of this Cause, together with the Most Reverend Father Gustavo Persiani, who holds the office of Promoter of the Holy Faith, and myself, the undersigned Secretary, and, in their presence, solemnly declared: That the Theological Virtues of Faith, Hope, and Charity in God and in neighbor, as well as the Cardinal Virtues of Prudence, Justice, Temperance, and Fortitude, and those virtues which are joined to them, are present in the venerable Servant of God, John Baptist Vianney, in a heroic degree, in the case and with regard to the matter under consideration. This Decree was ordered to be published and recorded in the acts of the Sacred Roman College on the 7th of August, in the year 1896. CAL. CARD. ALOISI MASELLA, Prefect of the Sacred Roman College. L.

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* S. Aloisius Tripepi, Secretary of the Sacred Roman College.

NORMS: From this Congregation of Sacred Rites, new Offices for the Saints and Masses, with accompanying prayers, are to be obtained.

1. The requests must concern only the Saints and Blesseds inscribed in the Roman Martyrology, or those who have a public cult by decision or confirmation of the Holy See. It is always necessary to have a special recommendation from the Ordinary of the Diocese, who, if required, must also include the consent of his Cathedral Chapter.

1. The petitions presented to us must concern only the Saints and Blesseds inscribed in the Roman Martyrology, or those who publicly enjoy a cult by decision or confirmation of the Holy See, already for a long time. However, a special recommendation from the proper Bishop is always necessary, who must also, if required, include the consent of his Cathedral Chapter.

[*Latin ed. p. 42*]

42 EX S. C. RITUUM 2. Concerning other Saints or Blesseds, although they have been honored, and indeed for a long time, with their own Office and Mass, it is necessary that, according to the customary rules, their cult be proven and confirmed by the Holy See, before their Office and Mass can be authorized.

2. Regarding other Saints or Blesseds, even though they have already been publicly honored for a long time with their own Office and Mass, it is necessary that, according to common rules, their cult be proven and confirmed by the Church, before their own Office and Mass are permitted.

3. Requests for Offices and Masses for new feasts of Saints, already venerated under another title, will be very rarely accepted. In any case, they must always be based on extraordinary and serious reasons, and, especially, must be supported by well-founded historical evidence.

4. From the perpetual calendars of each diocese, which are presented to the Sacred Congregation for the Preservation of Rites for approval, those Saints or Blesseds must be excluded for whom the conditions indicated in § 1, no. 1, are lacking, and those new feasts to which reference is made in no. 3, must be treated individually and with due seriousness in every matter of this kind.

5. Any request for new Offices and Masses must first be examined by the Liturgical Commission; then, with the utmost diligence, it is to be discussed in the Congregation, to which the Cardinal Prefect presides.

[*Latin ed. p. 43*]

Under the presidency of the Most Eminent Cardinal Prefect, the aforementioned deliberations take place. And, if the outcome of such discussion is favorable, the petition itself will be printed, along with all the supporting

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documents and the necessary clarifications regarding the preceding examination, and also with the notes of the Most Reverend Promoter of the Faith. The document thus prepared will be presented by a Cardinal Relator to the Holy Congregation in an Ordinary Session.

6. If the Holy Congregation approves the proposal, its resolution will be submitted for confirmation to the Holy Father, and only after the Pontifical confirmation will the draft of the Office and the Mass, which has been presented, be revised and approved, with the cooperation of the Hymnographer of the Holy Congregation, under the care of the Cardinal Relator and the Most Reverend Promoter of the Faith.

7. Extensions of Offices and Masses already granted to a particular Diocese or Church must be based on special reasons. These, moreover, will be examined, as are the original petitions, by the Liturgical Commission and the aforementioned Congress, and, if it deems it necessary, will be presented in a plenary session of the Holy Congregation, before being submitted for Pontifical approval, which is always necessary, when the original concession is to be extended.

[*Latin ed. p. 44*]

I. It is not the case that the matter concerning the rites has been addressed to each individual petitioner. 8. Modifications or additions to Offices and Masses already granted will be examined and discussed as extensions, as is mentioned in the preceding section. It is, unless perhaps the original concession was made to each individual petitioner. 8. Changes or additions that may occur in Offices or Masses already granted will be subjected to the same examination and discussion as extensions, about which mention is made in the preceding section. The Most Holy Pope Leo XIII, in an audience on the ninth day of July, 1896, after carefully reading the aforementioned norms, which were presented to him by the undersigned Cardinal Prefect of the Congregation for the Sacred Rites, deigned to approve them individually, and to prescribe the most careful observance of them. DECREE. Doubts concerning the consecration of a Church. At the request of several Roman Bishops for an authentic resolution of certain doubts concerning the consecration of a Church, the Congregation for the Sacred Rites, with the votes of both the Masters of the Sacred Liturgy and the Consultors of the Sacred Congregation itself, as well as a certain distinguished professor of Canon Law, investigated and arranged for the publication in print. Hence, His Eminence and Most Reverend Cardinal Franciscus Segna, in the Ordinary Assemblies of the Congregation for the Sacred Rites, held on the indicated day at the Vatican, proposed the following doubts for discussion: I. Can a Church, in whose consecration the consecration of the altar was omitted, be validly consecrated? II. Does a Church remain consecrated, or is it desecrated, if part or all of its walls are removed, along with the inlaid decoration, commonly called the intarsia, in order to be renewed? III. Can

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an altar, whether fixed or portable, which has been severely damaged but has been firmly cemented, or which has been formed from several stones, be validly and lawfully consecrated? And the same Sacred Congregation, after maturely considering all the proposed doubts, decided that the following answers should be given:

[*Latin ed. p. 45*]

FROM THE SACRED RITUALS, 45, I. Affirmative, that is to say, validly; but not licitly, unless an Apostolic dispensation is obtained, even if some, or all, altars are already consecrated; therefore, the order of the Pontifical Roman Ritual must be observed entirely, so that the integrity of the consecration may be perfected. II. The consecrated church remains, even if roofing work has been renewed on its walls. III. Negative; that is to say, the altar, of which mention is made, cannot be validly and licitly consecrated. On May 19, 1896. Subsequently, these matters were reported to the Most Holy Lord Pope Leo XIII by the undersigned Cardinal, Prefect of the Sacred Congregation for Rituals, and His Holiness approved and confirmed the judgment of the aforementioned Sacred Congregation on June 18, of the same year. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Rites Congregation. L. "S. ALOISIUS TRIPEPI, Secretary of the Sacred Rites Congregation. A QUESTION has arisen concerning the Masses of St. Aloysius Gonzaga, to be celebrated on the days designated by the Ordinary for the solemnity of the feast in each church and oratory. By a decree of the Sacred Congregation for Indulgences, dated April 22, 1742, and exhibited in the Acts of the Sacred Congregation for Rituals on January 29, 1746, wherever the feast of St. Aloysius Gonzaga is celebrated with solemnity, a day for the same feast may be designated by the local Ordinaries in each church and oratory, with the extension, to the aforementioned day, of a plenary indulgence to be obtained by the faithful in the usual manner of the Church, and the proper Office and Mass concerning the angelic youth are to be celebrated by the clergy. Hence, it has been requested by some ecclesiastical curias: "Whether, according to the practice of the Sacred Congregation for Rituals, all the proper Masses of St. Aloysius may be celebrated on any day designated by the Ordinaries, as in this case?" And the Sacred Congregation for Rituals, after consideration by the undersigned Secretary, and after mature deliberation, decided to respond: Affirmative: provided that there are not two Feasts of the first class and a privileged Sunday of the first class with regard to the solemn Mass; and also a Feast of the second class, nor privileged Sundays, weekdays, Vigiliae, or Octaves with regard to the Masses of the day; and the Mass must not be omitted.

[*Latin ed. p. 46*]

46 FROM the Sacred Congregation of Rites, concerning the Conventual or Parochial Office for the day, to which it applies, where the obligation to

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celebrate it exists; observing the rubrics. Notwithstanding any contrary decrees. June 27, 1896. C. L. * CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation. S. ALOISIUS TRIPEPI & R. C., Secretary. ORDER OF MINOR BRETHREN OF SAINT FRANCIS (CAPUCHINS). Various Doubts. The Reverend Father Anthony of Calmpthoutschenhoek, a calendarist of the Province of Belgium of the Brothers Minor of Saint Francis (Capuchins), with the consent of his Administrator, the Reverend Provincial Minister, and the Reverend General Procurator, humbly requested a resolution from the Sacred Congregation of Rites regarding the following doubts:

I. Whether a movable or immovable feast, which, due to a perpetual impediment, was celebrated outside of its assigned day with Apostolic permission, should be restored to its proper day once that impediment ceases, according to the decree of October 18, 1818, number 8, in Neapolitana?

II. In secondary feasts, should personal dignity be considered when there is a conflict, if such feasts are equal in terms of rite and other aspects?

III. When two feasts occur on the same day, one fixed and the other movable, all other things being equal, which of them should be transferred, if it enjoys the privilege of translation?

IV. Is the feast of the translation of Saint Barnabas the Apostle still to be celebrated according to the order of time, before other feasts of the same rite?

V. If, on January 16th, the primary and immovable feast of the Martyrs of the Order of Minor Brethren, Berard and his companions, coincides with a secondary and movable feast of the same class, attached to the Second Sunday after Epiphany, namely, the feast of the Holy Name of Jesus, should the latter be given precedence?

VI. If a particular Office attached to Sundays or weekdays has been granted permission to be transferred, if these are accidentally or perpetually impeded, can and should they be transferred to the first free day following, as to its proper place?

And the aforementioned Sacred Congregation, after considering the matter with its Secretary and hearing the opinion of the Liturgical Commission, has decided to respond as follows:

[*Latin ed. p. 47*]

FROM THE SACRED RITUALS, 4/7: Regarding I and II, affirmative. Regarding III, the decree in Viglevanen, February 21, 1896, regarding I (1), is to be observed. Regarding IV, affirmative, and the decree in Vienna, Austria, September 22, 1703, regarding 10 (2), is to be observed. Regarding V, negative, and the general decree of July 2, 1893, is to be observed. Regarding VI, affirmative. And thus it was written. June 27, 1896. C. CARD. ALOISI-MASELLA, S.R.C., Prefect. L.S. S.A. TRIPBPI, Secretary. ORDER OF MINOR FRIARS OF THE HOLY FRANCIS OF ASSISI (CAPUCHINS). Vari-

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ous Doubts. Reverend Father Antoninus of Calmpthoutschenhoek, a calendarist of the Province of Belgium of the Order of Minor Friars of the Holy Francis of Assisi (Capuchins), humbly submitted the following doubts to the Sacred Congregation of Rites for a suitable solution, namely: I. Whether the blessed Indult granted by Pope Pius VI on August 30, 1794, and inserted in the Bullarium of the Minor Friars of the Holy Francis of Assisi (Capuchins), Vol. IX, page 225, is also extended to the feast of Saint James of Merzig, considering the double rite of the second class? II. Whether it is permitted in the particular calendars of the Order of Minor Friars (Capuchins) to permanently assign the Office to December 1st, a day which is free in the calendar of the entire Order, due to a perpetual impediment? III. And, assuming a negative answer to 2, whether the Office assigned to December 1st, which would be of a lower, indeed equal, but of lesser dignity, should be removed from that day if it benefits from the privilege of translation, so that it may give way to a feast that is accidentally impeded, whether it be the feast of Saint James of Merzig, or of All Saints of the Order, or of Saint Andrew the Apostle? (1) VIGLEVANEN. Refers to Vol. XXVII, 507. (2) VIENNEN. Regarding doubt X: Whether the feast of Saint Barnabas, which is transferred here from June 11th, should be transferred and celebrated before the feast of Saint Quirinus, Bishop and Martyr, patron of our Cathedral, which is of lesser importance, from June 4th? Response to X: The Office of Saint Quirinus is to be celebrated.

[*Latin ed. p. 48*]

48 FROM SACRED RITUALS IV. When the Feast of the Most Sacred Heart of Jesus, or of the Most Pure Heart of the Blessed Virgin Mary, is the titular feast of a church, should the Octave of either feast, both in terms of the Office and in terms of commemoration, be postponed, so that it does not coincide with the Octave of the Nativity of Saint John the Baptist, or with the Feast of the Holy Apostles Peter and Paul? V. If the Second Vespers of the Feast of Saints Cyril and Methodius, Bishops and Confessors, of double major rank, coincide with the day of the Octave of the Holy Apostles Peter and Paul, or if the feast of double major rank, whether primary or secondary, coincides with the First Vespers of the Octave of All Saints, are they to be shortened, or recited on the following day with the commemoration of the preceding feast? VI. On the Second Vespers of the day of the Octave of Corpus Christi, are the Vespers of the Most Sacred Heart of Jesus to be recited, without the preceding commemoration, in a church where this feast is the titular feast and therefore primary by accident? VII. Does the Commemoration of Saint Paul the Apostle enjoy the privilege of translation over other Offices of double major rank, whether previously translated, or primary, or secondary, when it is impeded? VIII. Which calendar should those follow who, for the sake of preaching or for another reasonable cause, are absent from their community for several days? IX. What period of ab-

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sence from the community is required so that they are obliged to follow the calendar of their Province? And the Sacred Congregation of Rites, after considering the report of the undersigned Secretary, and having heard the opinion of the Liturgical Commission, after all matters were considered, decided to respond as follows: To I. The special rubric of the recently approved Breviary of the Order of the Minor Capuchins, printed by Salvinoci in 1894, should be observed. To II. Affirmative. To III. Provision is made in the second question. To IV. Affirmative, according to the Decree of the City [of Rome] of May 22, 1896, concerning the third question (1). To V. Regarding the coincidence of a feast of double minor rank with the Octave of the Holy Apostles Peter and Paul, the special rubric of the aforementioned Breviary should be observed; regarding the coincidence of a feast of double major rank, whether primary or secondary, with the Octave of All Saints, affirmative for the first part, negative for the second. (This Decree is found in Volume XXVIII, page 697.)

[*Latin ed. p. 49*]

FROM THE SACRED CONGREGATION OF RITES 49, Article VI. Negative, and the Decree of the City and the World, issued on June 28, 1889, must be observed (1). Article VII. Negative, and the Rubrics of the General Breviary of Rome, Title X, Concerning the Transfer of Feasts, number 7, must be observed, as well as the General Decree concerning primary and secondary feasts (2). Article VIII. If in choir, the Calendar of the Monastery must be followed, at which the Religious are staying; if privately, the Calendar of the Monastery from which they departed must be observed. Article IX. Approved authors should be consulted. And thus it was responded. On June 27, 1896. C. CARDINAL ALOISI-MASELLA, S. R. C., Prefect. L. & S. ALOISIUS TRIPEPI, Secretary. ORDER OF MINOR BRETHREN OF SAINT FRANCIS, CAPUCHIN. Various Doubts. Reverend Father Antoninus of Calmpthoutschenhoek, calendarist of the Province of Belgium of the Brothers Minor of Saint Francis, Capuchin, with the consent of his Superior, Reverend Father the Provincial Minister, and Reverend Father the General Procurator, humbly requested the Sacred Congregation of Rites to deign to resolve the following doubts, namely: I. If, on August 18th, the feast of some Saint Virgin and Martyr is celebrated with the Mass "Loquebar" or "Dilexisti," with the "SECRETS" or "POSTCOMMUNIONS," in the case of a change, should the readings be taken from the Mass "In virtute" or from another Mass, such as "Laetabilur"? II. Is it permissible, without obtaining a special Indult, to assign an Office of the rite, whether simple, double, or higher, up to December 30th, for the year preceding December 30th, which, however, is permanently impeded on that day? III. When several Provinces and one or the other Convent have particular Offices that are to be transferred, because they are permanently impeded on their own day, which should be transferred or assigned first? IV. If only one Priest is accustomed

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to celebrating Mass in Oratories, competently erected in Gymnasia (1) This Decree is found in Vol. X X I, 694. (2) The General Decree is found in Vol. XXVI, page 1. Acts, Volume XXIX, page CCCXXXVII. 4.

[*Latin ed. p. 50*]

50. Concerning the observance of the liturgical norms in hospitals and houses of pious communities, whether secular or belonging to religious orders: if these are secular, they should follow the calendar of the order if they enjoy that privilege; and if, at times, outsiders celebrate [Mass] there, should these [communities] be obliged to conform to the calendar of the priest attached to such a chapel?

V. Whether any priest celebrating a conventual or solemn Mass in the churches or chapels of nuns or religious women, which have a choral Office, is always obliged to say the Office corresponding to those [nuns or religious women]?

VI. In the case where only one priest celebrates [Mass] among the aforementioned nuns or religious women, can he, on semi-double or feria days, always, or at least sometimes, celebrate a Votive Mass or a Mass for the Dead, instead of the Mass appropriate to the day?

VII. Can the same priest, among the aforementioned nuns or religious women, celebrate the conventual Mass before or after Prime?

And the Sacred Congregation of Rites, after careful consideration of the report of the undersigned Secretary, and at the earnest request of the Liturgical Commission, decided to respond as follows:

To I: The Secret and Postcommunion are to be recited in the case of the Mass of Laetare, which are assigned in the more recent editions of the Missal for the feast of Saint Agapitus.

To II: Affirmative, with the consent of the Ordinary, if it is a double feast.

To III: The calendar of each Province is to be drawn up based on the perpetual calendar of the Order; the calendar of each monastery is to be drawn up based on the calendar of the respective Province.

To IV: Affirmative in all cases, if the chapels are to be considered public; otherwise, negative.

To V and VI: The General Decree of December 9, 1895 (1) is to be observed.

To VII: The conventual Mass is to be celebrated at the hours established by the rubrics.

And thus it responded.

June 27, 1896.

C. CARD. ALOISI-MASELLA

S. R. C. Prefect.

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L. & S. ALOISIUS TRIPEPI,

R. C. Secretary.

(1) This decree is found in Vol. XXVIII, 458.

[*Latin ed. p. 51*]

FROM SACRED CONGREGATION, DECREE GENERAL ON RITES, 51. CONCERNING PRAYERS AND RESPONSORIES TO BE SAID AT MISSES FOR THE DECEASED. To remove all doubt concerning the prayers and responsories to be said at Masses for the deceased, the Sacred Congregation of Rites declares:

I. Only one prayer is to be said at all Masses celebrated in commemoration of all the faithful departed, on the day and anniversary of their death or burial, and also at Masses sung or read on the days of the V, X, XXX, and anniversary, and whenever a Mass is solemnly celebrated for the deceased, namely, according to the rite that corresponds to a double feast, as is recited in the Office after the reception of news of someone's death, and on anniversaries, solemnly celebrated.

II. In daily Masses, whether read or sung, several prayers are to be said, of which the first is for the deceased or deceased specifically designated for whom the Sacrifice is offered, from those which are written in the Missal; the second, at the celebrant's discretion; the last, for all the departed.

III. If a Mass is celebrated in general for the deceased, the prayers are to be said which are found in the Missal for daily Masses; and in the same order in which they are written.

IV. If, in the same daily Masses, it pleases the celebrant to add more prayers, as the rubrics permit, this can only be done in read Masses, while observing the prescribed number, and the prayer for all the departed is to be assigned to the last place.

V. Finally, concerning the responsories, they are always to be said at any sung Masses, as also at read Masses which are celebrated on the days mentioned above; in the others, they may be recited or omitted at the celebrant's discretion, according to the rubrics. All contrary decrees to the contrary notwithstanding.

June 30, 1896.

C. CARD. ALOISI-MASELLA, S.R.C., Prefect.

L. S. A. TRIPPI, Secretary.

[*Latin ed. p. 52*]

52 FROM THE DECREE OF THE SACRED CONGREGATION concerning the singing of several Masses in the same church, on the same day, and of the same office. Since the Sacred Congregation, through several particular Decrees already issued, has declared that several Masses of the same office cannot be sung in the same church and on the same day; now,

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in order to satisfy the desires of many, it judges it opportune, and indeed almost necessary, to declare further, as it now does: Several Masses of the same Saint or Mystery are prohibited in the same church, unless those are which, besides the conventual Mass, are never omitted in collegiate churches, or which have some connection with the choral office. Therefore, the aforementioned Masses, whether offered at the request of the living, or by foundation, are not prohibited, provided that they are sung before or after the completed choral office, and without any connection with it. Contrary opinions to the contrary notwithstanding. June 30, 1896. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation. L. S. ALOISIUS TRIPPI, Secretary of the Sacred Congregation. GRAN. Various Doubts. The Reverend Theophilus Klinda, editor of the Gran Calendar, with the consent of his Eminence and Most Reverend Archbishop and Primate of the Kingdom of Hungary, humbly requests a solution from the Sacred Congregation regarding the following doubts: I. Can the third prayer be chosen at the discretion of the priest, from the Mass for the anniversary of the election or consecration of a Bishop? And, to the extent that it is affirmative: Can this same prayer, as a Collect, be ordered to be said in place of the third prayer at the discretion of the priest, if the local Ordinary is ill, or on his birthday or anniversary? II. The Sacred Congregation has often declared that Masses proper to the feasts of the Blessed Virgin Mary cannot be celebrated as votive Masses, except within their Octaves; hence the question: Is the Mass of the Most Holy Rosary of the B.V.M. exempt from this rule, and, mutatis mutandis, can it be celebrated as a votive Mass; and in the month of October, even outside of Saturday, can the Gloria be recited in such a votive Mass, due to a certain solemnity?

[*Latin ed. p. 53*]

FROM THE SACRED CANONS 53 III. The Decree of the Congregation of Sacred Rites, promulgated in the city and throughout the world on December 9, 1895, which establishes a firm and certain norm for celebrating Mass in a foreign church, does it admit of any exception, so that it may be permissible to celebrate Mass according to the proper Office of the classical rite, or at least to add the Symbolum conforming to such Office, when in the first and second cases, the color is the same for the proper Office and the Office of the foreign church? IV. The Sacred Congregation of Rites declared on August 30, 1892, in Strigonien, at VIII, that Masses on major weekdays are not votive, but of the day; therefore, they can also be celebrated on feast days with duplicity: this opinion is confirmed by the General Decree of December 9, 1895; the question is asked, whether this concession can be applied not only in duplicity, but also in multiplicity, so that, beyond the obligation of the choir, where two or more priests celebrate in the same church, one may say the Mass for the feast day and the other for the weekday? Furthermore, the Sacred Congregation of Rites, after considering the

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report of the undersigned Secretary, and having heard the opinion of another of its own Consultors, after mature deliberation, decided to respond as follows: To I. Affirmative to the first part, negative to the second part, and the Decree of August 17, 1709, in Bergomen, at III, (1) is given. To II. Negative in all respects, according to the Decree in Naples, February 23, 1884, Dub. V. (2). To III and IV. Negative. And thus it responded. On July 3, 1896. C. CARD. ALOISI-MASELLA, Prefect of the S. R. C. L. * S. A. TRIPPI, Secretary of the S. R. C. (1) BERGOMEN. Dub. III. At those times when two prayers are recited in the Masses at will, and by order of the Supreme Pontiff, or the Bishop, a special prayer must be added to the Masses for the public need, namely against the Turks, or to request serenity or rain, etc., must this prescribed prayer be necessarily placed in the Masses in the third place, and those recited at will be omitted; or rather, may the celebrant recite the third prayer at will or of devotion, and in the fourth place, the one prescribed by the order of the Pontiff or the Bishop? Response to III. In the case proposed, to the first part, negatively; to the second, affirmatively, as a precept and obligation. (2) Naples, reported in Vol. XXII, 380.

[*Latin ed. p. 54*]

54 FROM THE SACRED RITUALS OF GRAN. Various Doubts. The Reverend Theophilus Klinda, editor of the Calendar of the Archdiocese of Gran, with the consent of his Most Reverend and Most Reverend Archbishop, Primate of Hungary, earnestly requested the Sacred Congregation of Rites to resolve the following doubts:

I. The commemoration of the Most Holy Sacrament, to be performed in the Mass according to the rubrics, after the exposition of the Most Holy, is not excluded on the feasts of the Lord, according to the decrees, provided that it does not revolve around the same mystery. The question is: Should this aforementioned commemoration be omitted on the feasts and within the Octave of the Nativity, Epiphany, Easter, Ascension, Circumcision, and Transfiguration of the Lord? Also, should it be omitted on the feasts of the Most Holy Name of Jesus, the Most Holy Redeemer, and the Passion of the Lord, as it is omitted on the feasts of the Most Holy Heart of Jesus and the Precious Blood?

II. According to the rubrics and decrees, a solemn votive Mass for the Patron can be transferred, within the Octave of Easter and Pentecost, except for the second and third days, and can be celebrated in place of the customary or parochial Mass of the day, where there is an obligation to celebrate it; the question is whether such a solemn votive Mass for the Patron can be sung on the Sunday of the Passion, on White Sunday, and on the feast of the Most Holy Trinity?

III. A particular classical feast, for example, the feast of the Patron of the Church or of the place, occurring on days within a privileged Octave, and therefore hindered by the Office occurring on that day, can it be transferred

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to the first day immediately after the Octave, and hindered by the "m" (i.e., the Introit antiphon)? And if it can be transferred, should the feast occurring on that day, if it can be transferred, be simplified or omitted?

IV. More recent editions of the Proper of Hungary prescribe the recitation of the "Symbolum" (Creed) in the Mass of Saint Ladislaus, King and Confessor. The question is: Should the rubric "And does one say the Creed?" be removed from the aforementioned Mass in the edition that will soon be published?

V. In the Prayer of the Feast of Saint John the Almsgiver, Bishop and Confessor, despite the decree of September 25, 1852, the pronoun "e" is read: "Eleemosynam" (Almsgiving). Therefore, the question is whether this pronoun should be omitted in the new edition of the Proper of Hungary?

VI. Since, in many churches, only one Mass of Supplication is celebrated on the feast day of Saint Mark the Evangelist, the question is whether it should always be sung, or whether it can be read; and 2.° whether...

[*Latin ed. p. 55*]

FROM SACRED RITUALS 55, should the Commemoration of the feast of Saint Mark or of the Sunday in Albis be celebrated in the Mass, which will occur in the near future this year? VII. Thursday of the week. Rogation Day, which is the Vigil of the Ascension of the Lord, should a Commemoration of the Vigil, as well as the reading of the Gospel of that Vigil, also be made in the Mass of Rogations, which is celebrated only once in the same Church with the Commemoration of the feast that occurs? VIII. The Third Sunday of Advent, how should the Hymns be concluded, and what should be said as the short Response to the First within the Octave of the Immaculate Conception of the Blessed Virgin Mary? And the same Sacred Congregation, having heard the report of the undersigned Secretary, and at the request of one of the Consultors of the same Sacred Congregation, decided to respond as follows: Regarding I. The Commemoration of the Most Holy Sacrament, due to the identity of the Mystery, should only be omitted on the feasts of the Passion, the Cross, the Most Holy Redeemer, the Most Holy Heart of Jesus, and the Precious Blood. Regarding II. No. Regarding III. No, without a special Indult from the Holy See. Regarding IV and V. Yes. Regarding VI, concerning the first question: No, to the first part. Yes, to the second, according to the Decree of August 14, 1858, in Briocen, regarding III (1); concerning the second question: Yes, and the Decree of May 21, 1846, in Tuden, regarding II (2) should be given. Regarding VII. No, to both. Regarding VIII. The Hymns should be concluded, and the following should be said to the First: "Jesus, to you be glory," and "He who was born," according to the typical edition of the Roman Breviary. And thus it responded. On July 3, 1896. C. CARDINAL ALOISI-MASELLA, S. R. C. Prefect. L. ALOISIUS TRIPEPI, S. R. C. Secretary. (1) BRIOCEN.

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The volume TU, 605, was reported. (2) TUDEN. Doubt II. On November 12, 1831, the Sacred Congregation of Rites decreed: "In churches in which Mass is not usually sung daily, or if the parish priest is present on the feast of Saint Mark and during the Rogation Days, even if a double feast occurs, if a procession is held, the Mass of Rogations should be celebrated; otherwise, the Mass of the feast with the commemoration of the same should be celebrated." Therefore, it is asked, if after the procession, the Mass of Rogations is celebrated, should a commemoration of the current feast be made in it, and should...

[*Latin ed. p. 56*]

56 FROM THE SACRED CONGREGATION OF RITES, ORDER OF MINOR FRATIARIES OF SAINT FRANCIS, DOUBTS. Reverend Father Antoninus of Calmpthoutschenhoek, Calender of the Province of Belgium of the Minor Friars of Saint Francis of Assisi, with the consent of his most Reverend Provincial and the Reverend General Procurator of the same Order, humbly requests a solution from the Sacred Congregation of Rites to the following doubts:

I. Whether the Offices of the Blessed, where they are permitted, are subject to the same rules regarding the translation of feasts as the Offices of the Saints?

II. If the Apostolic See prescribes or permits a new Office and assigns a day on which the feast is to be celebrated, if the ancient Office is celebrated on its proper or natal day, must it give way to the new Office, which is more worthy and is celebrated on its proper or natal day?

III. 1. In view of the Decrees of the Sacred Congregation of Rites for the Order of the Capuchin Friars of December 4, 1894, and April 22, 1895, can the opinion be maintained that all particular Offices, mobile and attached to Sundays or weekdays, which are granted to the entire Order of Capuchin Friars, can be transferred without a special Indult, when they are accidentally hindered on their own day, provided that the rules are observed; as if they were to be recited among the Offices to be performed by order, since they are granted in terms not optional, but imperative? And, if affirmative, is the same to be said if it is a question not of the Breviary, but of a Calendar approved by the Holy See?

2. In the entire Order of the Capuchin Friars, on October 5th, the Commemoration of All the Deceased Brothers of the Order is celebrated with a double rite; and on the same day, in the Breviary of the same Order, that rubric regarding the recitation of the Office of the Dead is read, which is found in the Roman Breviary for the day of November 2nd; hence, the question arises, whether the Capuchin Friars, even outside of the choir in private recitation, are bound on the aforementioned day of October 5th to recite the Office of the Dead, and indeed under the same obligation as all other commemorations which would be said in the Mass of the day? Or,

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with all of this omitted, are the second and third Prayers to be said, which are prescribed in the Missal of Supplications in the Missal?

Answer to II: A commemoration of the feast occurring is to be made with only the third prayer, which is prescribed in the second place in the Mass of Supplications.

[*Latin ed. p. 57*]

FROM SACRED RITUALS 57, which gravely states that this Office is prescribed throughout the entire Church on the 1st of November. 3. Are not only the Minor Capuchins, but also other Religious who use their own Breviary or Calendar, whether attached to a choir or not, if they reside in a place where the Patron of the place is already celebrated, also obligated to celebrate the Patron of the Province and of the Kingdom and of the Diocese? 4. Whether the Minor Capuchins and the aforementioned Religious, residing in the City of Brussels, in Belgium, are obligated to celebrate there, under the double rite of the first class without the Octave, together with the Secular Clergy, the Feast of Saint Gudula, Virgin, on the 8th of January, or only the Feast of the Dedication of Saint Michael the Archangel on the 29th of September, or both Feasts, since those two Saints are considered as almost equally principal Patrons of the City of Brussels and of the Collegiate Church, and are observed by the entire Secular Clergy of Brussels under the double rite of the first class with the Octave? Furthermore, the Sacred Congregation of Rites, upon the report of the undersigned Secretary, and with the careful vote of the Liturgical Commission, responded as follows: To Question 1. Affirmative. To Question 2. The Decree of [date] June 30, 1896, must be observed. To Question 3. Regarding 1. Affirmative for both. — Regarding 2. Affirmative. — Regarding 3. The Decree of the Order of Friars Minor of Observance of March 20, 1683, number 7 (1), must be observed. — Regarding 4. Religious are obligated to celebrate the Feasts of the Patrons which are observed as holidays. And thus it responded. On July 10, 1896. C. CARD. ALOISI-MASELLA, Prefect of the S. R. C. L. * S. A. TRIPEPI, Secretary of the S. R. C. (1) Order of Friars Minor of Observance. Doubt VII. "Since, according to the declaration of this Holy Congregation, Religious are obligated to recite the prayers for the principal patron of the place; does 'place' include also the principal patron of the Kingdom or Province, concerning which permission has been granted by the Apostolic See that both the Secular and Religious Clergy in those places recite the prayers? Answer to VII. It is understood to include also those patrons, if it is clearly established that permission has been granted by the Apostolic See."

[*Latin ed. p. 58*]

58 FROM THE SACRED CONGREGATION OF RITES, ORDINANCES, MINOR ORDER OF ST. FRANCIS, CHAPTER 1, VARIOUS DOUBTS. Reverend Father Antoninus of Calmpthoutschenhoek, Calendarist of the

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Province of Belgium of the Order of the Minor Friars of St. Francis of Assisi (Capuchins), with the permission of his Most Reverend Provincial and the Reverend General Procurator of the same Order, humbly requested that the Sacred Congregation of Rites deign to resolve the following doubts:

I. The Sacred Congregation of Rites, on September 16, 1893, granted to the Order of the Capuchin Minor Friars the permission to transfer Offices which enjoy the privilege of translation and are accidentally impeded, and which cannot be restored on days free from work within the year, because such days are lacking, to the days of the half-festivals, reducing the half-festivals to the rite of the simple feasts, provided that no day free from work is omitted. Hence, the following is asked:

1. Does any law exist establishing the order in which these aforementioned translations must be made to the half-festivals?

2. Must they be made to the nearest half-festivals of the rite, according to the Decree in Piacenza, November 12, 1814?

3. Is it necessary to ensure that at least one day free from work remains each month for Votive Masses, or for Masses for the Dead, during the half-festivals?

4. Can the feast of a lesser double, which can be transferred, such as the feasts of the Doctors of the Church, and which is accidentally impeded on its proper day, be transferred to November 2nd and October 5th, on which days the solemn commemoration of All Faithful Departed, or of All Deceased Brothers of the Order of the Capuchin Minor Friars, is celebrated?

5. When there are several and diverse Offices to be transferred for the respective Convents, which are accidentally impeded on their proper day, is it permissible, for this or that Convent, before they are restored, to omit some half-festivals in order that, in all Convents, as much as possible, the Offices transferred may be "restored" on the same day?

II. 1. Regular Canons residing in Belgium and France, who, on a designated day, according to an Apostolic concession, celebrate, under the double rite of the first class with the Octave, the Dedication of All Churches of their own Order, must they, according to the Decree of Cardinal Caprara, together with the secular clergy, celebrate the Dedication of all Churches of the Diocese under the double rite of the first class with the Octave, on the Sunday following the Octave of All Saints?

[*Latin ed. p. 59*]

I. Regarding the observance of feasts, specifically the Feast of All Saints and the Dedication of Churches, the following questions are posed:

1. And to the extent that the affirmative answer pertains to the question of which day they ought to celebrate the aforementioned Feast, if in the Diocese in which they reside, the Feast of All Saints were celebrated on a different day than Sunday, immediately following the Octave of All Saints,

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by a derogation granted by the Apostolic See through a Decree of Cardinal Caprara?

2. Regarding Regular clergy who, nevertheless, do not celebrate the Dedication of All Churches of their own Order on a specific day, on which day ought they to celebrate the Dedication of All Churches of the Diocese, if in the Diocese in which they reside, this Dedication were celebrated on a day other than Sunday immediately following the Octave of All Saints?

III. 1. Are Regular clergy, using their own Calendar or Breviary, obligated in the Dioceses of the ancient Ecclesiastical Province of Mechlin, namely in the present Diocese of Tournay and in the Archdiocese of Cambray, to conform to the secular clergy in matters that have been established either by Provincial Councils approved by the Apostolic See, or by particular Decrees of the Sacred Congregation of Rites?

2. Must the same Regular clergy in the aforementioned Dioceses conform to the secular clergy in matters concerning the celebration and translation of the Feast of Saint Mark, the Greater Litanies, and abstinence from meat, as established by particular Decrees approved by the Holy See?

Furthermore, the Sacred Congregation of Rites, after considering the written submission of the undersigned Secretary and after hearing the opinion of the Liturgical Commission, has decided to respond as follows:

To I. Affirmative to 1, and more solemn Offices should be assigned to the nearer days, even if Duplex or Semi-Duplex Offices occur on those days, provided that free days subsequently follow, to which other, less solemn Offices may be transferred.

To 2. As provided in the first question.

To 3. Affirmative, according to other decrees.

To 4. Affirmative.

To 5. Negative in all cases.

To II. Negative; and the Decree "Of the Order of the Minor Capuchins of the Province of Holland," dated June 22, 1895, should be observed.

To 2. As provided in the first question.

To 3. In particular cases, recourse should be made.

[*Latin ed. p. 60*]

60 FROM THE SACRED CONGREGATION OF RITUALS, Instruction III, regarding 1: The General Decree "Of the City and the World," dated May 27, 1895, concerning the Feast of the Annunciation, and its octave, both in terms of the feast itself and in terms of the Office, must be observed. Nevertheless, this does not invalidate particular concessions granted to certain places ii). Regarding 2: Concerning the Feast of Saint Mark and its octave, the Calendar of the Order, approved on August 27, 1893, and the Breviary, likewise approved on December 4, 1894, must be observed.

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However, if the particular decrees mentioned therein pertain to Regular Canons, those decrees must be followed; otherwise, the rubrics must be observed. And thus it was decreed. July 10, 1896. C. CARDINAL ALOISI-MASELLA, Prefect of the Sacred Congregation. L. * S. A. TRIPPI, Secretary of the Sacred Congregation. PINNENSIS. Concerning the beatification and canonization of the venerable Servant of God, Gabriel, a professed cleric of the Congregation of Regular Clerics of the Most Holy Cross and Passion of Our Lord Jesus Christ, of the Diocese of Penne. The Diocese of Penne, rejoicing in the birth and life of this venerable young man, is filled with a new joy, as it contemplates another young man, the venerable Servant of God, Gabriel, of the Virgin Dolorosa, whose sacred relics it guards as a treasure. One was a layperson, the other a cleric; both were shown from Heaven, so that all, especially young people, may strive to fill their lives with virtue in this fleeting world. Gabriel was born in Assisi, of Saint Possenti and Agnes Frisciotti, on March 1, 1838, and, like his angelic patron, shared a heavenly name and homeland. Still a child, in 1842 he was taken to Spoleto, and, orphaned of his mother, he was imbued with the rudiments of letters and religion by his father and by the Brothers, whom he called from the Christian schools. From there, he was sent to the College of the Fathers of the Society of Jesus, renowned for its teachers and frequented by students, where, through his intelligence, piety, and discipline, he was rewarded with the highest praise and honors. While devoted to his studies, he, in the fervor of youth, seemed to indulge somewhat in the pleasures of the age; but God, who had chosen him, tested him with a serious illness, so that he might renounce earthly things. (1) This decree is found in Volume XXVIII, page 57.

[*Latin ed. p. 61*]

From the Acts of the Congregation of Sacred Rites, 61, it is evident that he aspired to the heavenly mansions. Indeed, this young man, having been so thoroughly tested and having shown such excellent qualities, illuminated by divine light and spirit, and having passed away on September 10th of the year 1856 at the Monastery of Morrovalles of the Fathers of the Holy Cross and Passion of Christ, there, having received the habit of the religious order, he began to be called Gabriel by the Virgin of Sorrows; and describing this new state of life to his father, he highly recommended that sacred monastery, saying that its peace and sweetness were in no way comparable to worldly pleasures and comforts. Having completed his novitiate with the highest praise, in September of the year 1857 he pronounced his religious vows, feeling himself more closely bound to God, and drawn towards perfection. Although initiated only into the lesser orders, and not promoted to the higher ones due to the injustice of time, Gabriel, a professed cleric, was strict and rigorous with himself, beloved by God and men, and with singular piety he followed Christ Crucified and the Sorrowful Mother of

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God, faithfully observing the manner of life of his Congregation, together with its rules. But more worthy of heaven than of earth, at the age of twenty-four years, in the Monastery of Penne, to which he had been transferred in order to dedicate himself to studies, he was seized by a deadly illness, and, having received the sacraments of the Church, while invoking the venerable names of the Holy Family, he peacefully breathed his last on February 27th of the year 1862. The fame of sanctity and virtues, which this most pious young man had already acquired while still living, after his death, was confirmed by numerous miracles, attracting inhabitants and pilgrims to his tomb, and it became increasingly evident through numerous testimonies. Therefore, at the urgent request of the Reverend Father Germanus of Saint Stanislaus, from the Congregation of the Clerics Regular of the Most Holy Cross and Passion of Our Lord Jesus Christ, and as Advocate for the Cause, Our Most Holy Lord Pope Leo XIII, on June 10th, 1895, approved the judgment of the Congregation of Sacred Rites regarding the revision of the writings of the Servant of God, and, with subsequent decrees of August 26th and November 8th of the same year, he graciously granted that the introduction of the Cause of the same Servant of God could be discussed in the aforementioned Sacred Congregation without a vote and without the intervention of Consultors, even though less than ten years had passed since the presentation of the Ordinary Process. Wherefore, having received repeated and fervent prayers from the aforementioned Advocate, and attentive letters from numerous Most Reverend Cardinals, other prelates, and other men of ecclesiastical dignity, the Cardinal Prefect of the Congregation of Sacred Rites and Relator of this Cause, in the Ordinary Meetings signed below, on...

[*Latin ed. p. 62*]

62 From the Sacred Congregation of Rites at Vatican, the following question was proposed for discussion: Whether the Commission for the Introduction of Causes should be signed in the case and to the effect of which we are speaking? And the aforementioned Sacred Congregation, after mature deliberation and having heard the voice and written opinion of the Reverend Father Gustavo Persiani, serving as Promoter of the Holy Office, decided to respond: Affirmative, that is, the Commission should be signed if it pleases the Most Holy [Pope]. On June 23, 1896. After the war, these matters were reported to Our Most Holy Lord, Pope Leo XIII, by the aforementioned Cardinal, and His Holiness, approving the response of the Sacred Congregation of Rites, deigned to sign the Commission for the introduction of the cause of the aforementioned Venerable Servant of God, Father Gabriel of the Virgin of Sorrows, on July 7 of the same year.

CAL CARD. ALOISIUS MASELLA, S. B. C., Prefect.

L. * S. ALOISIUS TRIPEPI, S. R. C., Secretary.

DECREE. Regarding Masses for the Dead.

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Given that, in recent times, the number of Double Offices has increased, especially in particular calendars, and that there are few days during the year on which private Masses for the Dead are permitted, and that these Double Offices are sometimes hindered by those of a higher rank, certain ecclesiastical men, distinguished by piety, learning, and dignity, humbly and with great reverence requested Our Most Holy Lord, Pope Leo XIII, that, for the benefit of the departed faithful and for the spiritual consolation of the living, Masses of the Dead, chosen from the Office, might be celebrated several times a year on double days, even, in churches and chapels, both public and private, especially those properly erected or to be erected in cemeteries, with Apostolic benevolence.

It pleased the same Most Holy Lord to entrust the examination of this matter to the Sacred Congregation of Rites, which, at the earnest request of the Liturgical Commission, after mature deliberation, and taking into account the particular circumstances of each place, in an ordinary meeting, held on the day indicated at Vatican, decided to respond to the question proposed by the aforementioned Cardinal, Prefect of the aforementioned Sacred Congregation:

[*Latin ed. p. 63*]

FROM SACRED CONGREGATION OF RITES 65: If it has pleased the Most Holy [See], it is permitted that in any properly erected or being erected burial chapel, Masses which are allowed to be celebrated therein, may be of Requiem on days not prohibited by a double feast, by Sundays and other feasts to be observed, as well as by weekdays, vigils, and privileged octaves; also, in any churches and chapels, whether public or private, and in chapels pertaining to seminaries, colleges, and religious communities of both sexes, private Masses of Requiem may be celebrated, with a body present, unburied, or even buried, but not beyond two days, on the day or for the day of death or deposition; but under the clauses and conditions, according to the rubrics and decrees, under which a solemn Mass of Requiem is celebrated in the same cases. Contrary things notwithstanding. On May 19, 1896. Later, these matters were reported by myself, the undersigned Cardinal, to the Most Holy Lord Pope Leo XIII; and His Holiness deigned to ratify and confirm the judgment of the Sacred Congregation itself in all respects, on June 8 of the same year. C. CARD. ALOISI-MASELLA, S. R. C. Prefect. L. J $ Í S. ALOISIUS TRIPEPI, Secretary. FROM SACRED CONGREGATION OF INDULGENCES. Concerning the Indulgences attached to the recitation of the prayer "Angelus Domini" and the antiphon "Regina coeli." Calcedonius Mancini, Priest of the Congregation of the Mission and Editor of the "Ephemerides Liturgicarum" for the following two years, humbly requests a solution from the Sacred Congregation presiding over Indulgences and Sacred Relics, concerning the following: I. Whether, on the Sabbaths of Lent, in

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which the Vespers are anticipated before midday, the prayer "Angelus Domini" is...

[*Latin ed. p. 64*]

From the Sacred Congregation for Indulgences, 64: It must be recited at midday, standing, as the final antiphon of the Vespers is recited standing; or rather, should it be recited kneeling in order to gain indulgences?

II. According to the norms prescribed by the authentic collection of Prayers and pious Exercises published by the Sacred Congregation for Indulgences in the year 1886, by Decree of May 21st, should the "Angelus Domini" prayer or the "Regina Coeli" antiphon be recited, standing, at midday on the Sabbath within the Octave of Pentecost, in order to gain indulgences? And in the plenary Congregation held on March 5th, 1896, in the buildings at Vaticanis, the Cardinals responded: It is advisable to consult with the Most Holy Father for a suitable declaration regarding both questions. On May 20th of the same year, during an audience granted by the undersigned Cardinal Prefect of the Sacred Congregation, Our Most Holy Lord Pope Leo XIII benignly declared: The "Angelus Domini" prayer must be recited standing at midday on the Sabbaths of Lent; but on the Sabbath within the Octave of Pentecost, the "Regina Coeli" antiphon must be recited at midday.

Given at Rome, from the Secretariat of the same Sacred Congregation, on May 20th, 1896.

ANDREAS L. CARD. STEINHUBER, Prefect.

ALEXANDER, Archbishop of Nicopolis, Secretary.

[*Latin ed. p. 65*]

65 FROM THE HOLY CONGREGATION OF THE ROMAN COUNCIL OF ELECTION, January 25, 1896. Session 22, Chapter 8, Concerning Reforms. SUMMARY OF FACTS. Three centuries ago, here in the City, a Society called the "Sodalitas ab Oratione et Morte" was established, adorned with numerous privileges and distinguished by its insignia, and it boasts of having the Most Eminent Cardinal as its protector; its governor, however, is the Most Reverend Prelate of the Roman Curia. Among its members are Princes, and it is also adorned with the title of Archiconfraternity. Among the offices incumbent upon its administration is the office commonly called – "Provveditore di chiesa" – which is held for two years by a member. For this reason, the office was vacant at the end of the year 1894, whereupon a general Congregation was held, according to the law of the Sodalitas, on January 13, 1895, and three candidates were proposed for election, namely Paolo Raselli, Francesco Blünder, and Enrico Paperi; so that he who received the greater number of votes would hold the office. Indeed, with fifty-three members giving their votes, Paolo Raselli received 35 votes, Francesco Blünder received 9, and Enrico Paperi received 9. However, the brother

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Paolo Raselli refused to accept the office, and from this refusal arose a question: whether, namely, two brothers, elected with an equal number of votes, should be subjected to a new electoral process, commonly called – "ballottaggio" – or rather, whether three should again be proposed to the general Congregation, from whom one would be chosen, as explained above. The written law of the Sodalitas, examined by the senior brothers in charge of the administration, commonly called – "la Banca" – was not considered sufficiently clear to resolve the doubt, and therefore they decided to refer the question to the authentic Act of the law, Volume XXIX, page CCCXXXVIII, 5.

[*Latin ed. p. 66*]

66 In the interpretation of ROMANA law, in the specific case. — The articles of the law concerning the method of electing officials are as follows: "These three candidates, so carefully selected, will be presented to the General Congregation on the same day, approximately one hour after the time set for the Secret Congress or Congregation; or the following day, if the selection of the three candidates had been made by the Reverend Protector; and the election will be made by secret ballots. Therefore, each brother will receive from the one presiding over the General Congregation a ballot; and placing his hand over each of the three ballots, at the foot of which will be written on a bulletin the name of the candidate, he will place his vote in the one he believes to be the best." "He who receives the most votes will be elected. In the event of a tie, the ballot will be run a second time with the same method, and if the tie persists, the choice will be left to the Bank." "If the elected person renounces, the next in order of voting will succeed, provided he has received at least one tenth of the votes; if the three candidates are exhausted, what has been ordered above will be done both for the formation of a new group of three candidates and for the election. If, however, the case arises of another exhaustion of the group of three candidates, the Bank will have the power of free election." The brothers, assembled in the General Congregation, responded that there was no place for a new election between two brothers who had previously been elected with equal votes, but that a new group of three candidates should be presented and an election held. Subsequently, a General Congregation was called, but it abstained from the proposed action because of a complaint brought by the brothers Blünder and Paperi to the Governor of the Sodality, who claimed that they had been wronged, since, according to the law of the sodality, it was not necessary to proceed with a new group of three candidates, but only to deliberate on who, from among themselves, who had already been properly presented and elected, should succeed the one who had renounced. Because the Governor had referred the matter to the Reverend Protector, the latter responded shortly thereafter, praising

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and approving the proposed course of action.

[*Latin ed. p. 67*]

ROMANA 67, having thus far followed the aforementioned procedure, and ordering that the General Congregation should decide by choosing from three names proposed according to custom: as was done on February 3, 1895, with the election of Brother Giuseppe Galeotti to the office of "Provveditore di chiesa." Although two brothers contested, Enrico Paperi did not proceed further; but Francesco Blünder, the present litigant, petitioned the Sacred Congregation for Councils (S. C. C.) in a written document, requesting that the matter be examined properly.

The Synodal Advocate noted, first of all, that the article of the law, already mentioned, excludes one of the two brothers elected with equal votes, because he should be succeeded by "the other, according to the order of voting." But this order of precedence among equals is not established. Furthermore, he observed that the so-called "ballot," or preferred method of election, is not mentioned, nor even hinted at, in the text of the law. For the law prescribed that one should be chosen by a majority of votes; therefore, he concluded: "In the case of a tie, the election will be held a second time with the same method." Then, "If the elected person refuses, the other will succeed according to the order of voting... if the three candidates are exhausted (that is, the Advocate argues, if neither of the two remaining is willing or able to succeed), 'what has been ordered above will be done both for the formation of a new group of three, and for the election.' And if the case of another exhaustion of the group of three should arise, the institution will have the faculty of a free election." Therefore, he concluded that the aforementioned method, called the "ballot," is entirely contrary to the letter and spirit of the law; and that if the election fails repeatedly, the right of free election devolves to the higher-ranking brothers constituting the institution, commonly called "the Bank." Therefore, the Advocate insisted that the will of the law must be derived both from its context and from the intention of the same law, recalling this criterion of interpretation as explained by Richerio in his work *Universa civilis et criminalis Iurisprudentia*, p. I, c. 1, *IURA SODALITATIS*.

[*Latin ed. p. 68*]

68 ROMANA, sect. 1; § 17: "Before we speak of the rules of interpretation, two things must be noted. No interpretation is necessary when the meaning of the law is manifest; for it is not necessary to explain more clearly what is sufficiently clear in itself. Therefore, the law is only to be interpreted when the words of the legislator do not clearly demonstrate his intention. Secondly, the meaning of the law can only be ascertained by carefully considering the entire context of the text and by paying attention to each word of the law, comparing them with each other, so that the declaration, and

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consequently the knowledge of the will [of the legislator], may be derived from all of them (leg. 24 dig. de regulis iuris). It is uncivil to judge or answer concerning any part of the law without having considered the whole law." From these statements, the Procurator believes that sufficient satisfaction has been given to the prior question; namely, regarding the legitimate exclusion of what is commonly called the "ballottaggio" [runoff election]; therefore, he notes that this necessarily depends on the other [election] and that its decision is contained in the previous one. For, when the first election ceased, due to the renunciation of one candidate and the impossibility of succession for the others, and since neither candidate had the majority of votes, it was necessary to proceed to a second election. Furthermore, he observes that this could not have prevented the complaint of the brother Blünder, because the matter at hand was not about derogating from the constitutions of the Sodalitas [religious community] or about invalidating a right, but about authentically interpreting the will of those constitutions, which was a matter that could not pertain to anyone other than the General Congregation, since it was the General Congregation that had established those same constitutions. The Procurator argues that this interpretation has been confirmed by the Congregation with full knowledge of the matter, not once, but repeatedly; for, after the dispute was initiated before the Sacred Congregation by the Sodalitas, as is customary, the observations were duly presented in this decree; namely, after the members of the Sodalitas had been heard, and after they had been duly convened in the full Congregation, and after they had been fully informed of the reasons presented by the accuser, they, as if with a unanimous response, ratified and confirmed what had been done up to that point.

[*Latin ed. p. 69*]

69. Finally, because, after the controversy arose, it happened that the Prelate, the Governor, resigned from office, and it was insinuated that this completed the demonstration of his disapproval regarding the manner of acting in this matter, the Advocate maintained that this was contrary to the truth; because the Governor resigned from office due to excessive cares with which he was distracted in various offices; and because he did not wish to resolve the matter himself, but referred it to the Most Reverend Protector, although he himself seemed to be inclined towards the opposite opinion. DEFENSE OF FRANCISCUS BLUNDER. The Accuser, regarding the allegations he presented, claimed that the procedure of the Sodalitas in the disputed matter was objectionable, both for its improper form and for the violation of a clear legal provision. Regarding the form of the process, he stated that he had informed the Prelate, the Governor, of his intention to convene a general Congregation, so that it might resolve the arisen controversy. Then, he recounts that the Governor, through letters sent to the Secretary of the Archiconfraternity, had made known his opinion regard-

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ing the interpretation of the Constitutions; namely, that only two confreres with equal votes previously elected should be admitted to a new election. Nevertheless, the Accuser stated that a general Congregation was held, in which no mention was made of the opinion of the Governor, nor of the reasons presented, nor of the text of the disputed article. Therefore, according to the Accuser, the Governor was forced to resign from office, as it was demonstrated that his authority had been openly disregarded; for the Constitutions of the Sodalitas, in chapter XIII, state: "All serious and important matters shall be reported to the Governor himself, who will consult with the Guardians and propose resolutions in the Congregations, and then execute what is resolved." Furthermore, the Accuser believes that the general Congregation was not competent to resolve the present controversy; but rather, a secret Congregation, according to the text of the Constitutions in chapter 46 - thus conceived: "In any case of variation or reform of some provisions or of..."

[*Latin ed. p. 70*]

70. "Concerning this matter, it must be clearly explained in the Secret Congregation." Finally, another fault was found by the incompetent actor during the general Congregation held on March 10, 1895: namely, that the newly elected official, although he did not give his vote, and his brother, in violation of the statute in chapter 11, decided as follows: "If it should happen that something is being discussed in which some brother has an interest, that brother must first leave the Congregation, and this even if the interest relates to a relative, up to and including the second degree of kinship." Regarding the merit of the matter, the actor believes that he can easily resolve it. Indeed, he points out that the exception made for the adversaries must be considered; namely, that the statute, which is unknown and foreign to the most ardent, is an institution of a new experiment for the election, commonly called a "ballot." For the letter of the law, he says, although expressed in different words, explicitly states: "In case of a tie, the election will be held a second time, using the same method, and if the tie persists, the choice will remain with the Bank." To what does this provision refer, he insists, if not to eliminating the tie in the votes; and to obtaining a majority for the election; which is done through a new experiment of the election, which is commonly heard – a "ballot." It is necessary, the actor argues, to resort to such an experiment, as evidenced by the text of the law, which requires an absolute majority of votes in the election, and which does not allow for a proposal and election of another group of three names, unless the previous group of three has ceased to be elected; for the article states: "He who has received the most votes shall be elected. In case of a tie, the election will be held a second time, etc. - If the elected person renounces, the next in order of votes will succeed, provided he has received at least one-tenth of the votes, AND IF THE GROUP OF THREE

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HAS BEEN EXHAUSTED, what has been stated above will be done, both for the formation of a new group of three, and for the election."

[*Latin ed. p. 71*]

71. Finally, the Advocate observed that it is certainly not permissible if the election and the renunciation of the election are not carried out by the same act, or if they are not held during the same general Congregation; for this is not prescribed by the Statutes, nor does it prevent two confreres, who were previously elected with equal votes, from being subjected to a new experiment of election by the general Congregation, convened again. With these considerations in mind, the following question was proposed for consideration: Whether the election, made on February 3, 1895, is valid in this case. RESOLUTION. After deliberation, the Holy Congregation decided on January 25, 1896, to respond: Affirmative, and furthermore. ALGERIA. NULLITY OF MARRIAGE. February 29, 1896. Session 29, Chapter 6, Concerning reforms, marriage. SUMMARY OF THE FACTS. Count Victor, 20 years of age, on September 25, 1871, before the local parish priest, in the Diocese of Angers, validly contracted marriage with Paulina, who was 18 years of age, the only daughter of a wealthy merchant. However, the conjugal bond did not proceed well, since, as the husband narrates, very soon quarrels arose between the spouses, which, although the husband endeavored to quell, yet, as they increased on the same day, conjugal cohabitation became almost impossible. Nevertheless, conjugal life continued for ten years, until the year 1881; in which year, the husband says, "I left Paris and went to Tunisia to establish myself there. From there, I wrote to my wife, inviting her to come to me, telling her that that was her place. She responded with a refusal and a letter of insults." In 1882, being...

[*Latin ed. p. 72*]

72. ALGERIA. In Algeria, as administrator, and as deputy of the mixed commune of Fedi el Zala, in the province of Constantine, I reiterated the invitation for her to come to me; an invitation which I repeated several times during the same year. Again, she refused. In 1883, learning from my mother of the bad conduct of my wife, and knowing also that she was seeking a separation of bodies, I made the same request. "A separation of bodies was declared by the civil court. After some time, Paulina requested a divorce, so-called, civil. Having obtained this, she did not blush to contract a second marriage before the civil magistrate with Camillo. In these circumstances, Victorius recounts: "The idea came to me to investigate whether there was some impediment in my marriage, in order to free myself from the situation in which I find myself." And he easily found a canonical impediment in his marriage, because he himself had not freely married Paulina, but was only constrained by his overbearing father. For the father, he now says, imposed this marriage because he hoped to benefit his own patri-

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mony through Paulina's substantial dowry, burdened as it was with foreign money. Therefore, on June 7th of the year 1893, Victorius presented supplications to the Archbishop of Algeria, earnestly requesting that his marriage with Paulina be declared null and void under the head of force and fear. Without delay, the Archbishop, after establishing a tribunal, conducted the proceedings according to the forms of law through a delegated judge, and on June 4th of the year 1894, pronounced the sentence, declaring "that there is no proof of the nullity of the marriage, between the aforementioned Victorius and Paulina."

SYNOPTIC DISCUSSION: DEFENSE OF THE HUSBAND. The advocate for the plaintiff first recalls the principles of law, which state that full and free consent is required in marriage, and that fear is a major impediment to this. Thus, Gonzales, *Decretal*, Book IV, title 1, chapter 15, paragraph 5: "Therefore, fear renders a marriage null, both in the internal forum, and..."

[*Latin ed. p. 73*]

ALGERIA. 73 external. The reason is, because marriage requires a completely voluntary consent, nowhere is freedom so necessary as in marriage." It is also established in law that a greater degree of voluntariness is required for marriage than for other civil contracts, as Portius De Impedimentis Matrimonii, Cons. 31, q. 3, p. 13 states: "For marriage, a more and more perfect voluntariness is required than for civil contracts." Indeed, the advocate continues, there must be such complete freedom in those entering into marriage, that not only coercion, but even the fear of coercion, or a just fear and suspicion of the indignation of parents, is sufficient for fear. Thus, Zypaeus teaches in Van Espen, part II, section II, title 13, no. 1: "When it is truly established that, although based on the advice of a prudent man, a slight reason has, in truth, caused a serious fear, so that spontaneous consent is lacking, there is no doubt that the marriage should be considered invalid, because it makes no difference by what fear someone was compelled, as long as it is established that he was compelled." However, the advocate states, it is not necessary that the fear invalidating the marriage be caused by threats of death or the like, but that the fear falling upon a steadfast man is sufficient, as all canonists teach. In assessing the gravity of the fear, the advocate points out, one must not only consider the nature of the threats, but also the quality of the person, both the one instilling the fear and the one experiencing it. Especially if it is the father who instills the fear in his son, who lives with him in the same house, and if the father is of a harsh and severe nature towards his son, rigid and unyielding, and steadfast in his purpose. Furthermore, it is a well-established principle of jurisprudence, he continues, that long-lasting and persistent persuasions, indeed even frequently repeated prayers, regarding the proposed marriage, combined with a reverential fear, even without threats and beatings, con-

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stitute a fear that falls upon a steadfast man, and is effective in invalidating the marriage. Thus, Cosci, De Separatione, lib. 3, cap. IV, no. 78 et seq.; Pignatelli, Vol. 9, cons. 180, no. 19; Pirringh, Lib. IV, tit. 1, sect. 4, S.

[*Latin ed. p. 74*]

74 ALGERIA. n. 119: Gonzales, *Liber Quartus Decreti*, title 1, concerning marriage and espousals, chapter 15, *Rota Coram*, *Emeriz*, Decision 870, n. 7: "Persuasion and entreaties take the place of compulsion and coercion, and they instill fear in a man who is about to become steadfast, especially when they come from the father and other superiors"; and many other Doctors. The lawyer observes that this doctrine is all the more valid if the father who instills fear had an interest in the celebration of the marriage, since he hopes that a great benefit will accrue to himself or his family; for then it is more difficult for the son to oppose his father's wishes, since a great fear arises of incurring his greater indignation. Regarding the *Barbosa* case, *Vota*, Decision, *Liber Secundus*, volume 16, n. 30: "This undoubtedly occurs when the one who instills fear has an interest in the contract being celebrated; as was the case with Captain Thomas, the father of the aforementioned Nicholas, who was a debtor of a large sum to Anne, the mother of the aforementioned Eleonora. With this interest in mind, only reverential fear is said to be sufficient to 'rescind the contract'." All of these things, according to the lawyer, are more easily verified if the matter at hand concerns a son who has not yet reached the age of majority; especially if he is of a timid disposition and accustomed to obeying his father's will. Then, less fear is required to invalidate the marriage. This is how almost all of the aforementioned Doctors state it. With these principles established in law, the lawyer believes it is appropriate, before demonstrating that the actor's marriage was invalid due to fear, to make clear the character of the one who instilled fear, as well as the manner in which he acted, and the character of the one who experienced the fear. The lawyer says that Victor's father was so tenacious in his character and so firm in the exercise of his authority within his family and in the exercise of paternal power, that he could not be dissuaded from his intentions by any means; and if his will was contradicted, he was often corrected by anger; which is confirmed by many witnesses. On the other hand, the lawyer notes, Victor was of a gentle, mild, and submissive disposition, especially towards his father, as many witnesses attest.

[*Latin ed. p. 75*]

ALGERIA. 75. Wherefore, according to the procurator, the actor's will always remained subservient and subdued under the father's authority. And this becomes even more evident when it is carefully considered that a significant reason for the father to exert influence over his son was that the son would derive the greatest benefit for his own patrimony from the dowry of

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the bride. For although the father was counted among the wealthy in his homeland, at the time when the marriage of his son was being arranged, he had been forced to contract debts amounting to a very considerable sum. This is confirmed by the testimony of numerous witnesses. Now, to demonstrate the facts, the patron argues that, in this case, the father exercised coercion over his son, and therefore his marriage to Paulina was null and void. Indeed, he states, this is not only confirmed by the sworn testimony of the unfortunate Victor, but also by the testimony of several witnesses, all of greater standing, who, when properly questioned, unanimously affirmed that the father of Victor had used prayers, entreaties, and the pressure of paternal authority to induce his son to enter into a marriage against his will. To this evident proof, the orator adds, is joined the very confession of the father himself, who instilled fear in his son. For, beholding the abyss into which he had cast his son, he lamented his guilt with great sorrow, and throughout his life he confessed himself to be the author of such a great evil. All of these things are corroborated by witnesses. Having thus proven the coercion, the actor's patron proceeds to refute the objections; and first, he maintains that it cannot be said that, during the marriage, the fear was removed and that the nullity of the marriage was thereby cured. For, as is required after the publication of the Council of Trent concerning the validity of marriages, the presence of the parish priest and witnesses is necessary, as Fagnanus teaches in chapter "De Spons. impub." number 13: "It is necessary to contract the marriage before the parish priest and witnesses, according to the form prescribed by the Council of Trent." This rule is only excepted in the case where the nullity arises from a hidden impediment. But a hidden impediment is considered to be that...

[*Latin ed. p. 76*]

76. ALGERIA. Furthermore, what could never be proven in a court of law. Thus, according to the common opinion of Doctors, Reiffenstuel states in the appendix on Dispensations, § #, no. 44: "An impediment is considered hidden when it is either entirely secret, so that it cannot be proven in any way, or even if it is known by one or another, by three or four people, there is no danger that it will be further publicized." But, the advocate continues, it is clear from the testimonies that the impediment in the present case is public. Moreover, according to the advocate, regardless of the Tridentine formula, the consent in this case, and its presumed revalidation, should not be given any weight, both because of the persisting fear and because of the ignorance on the part of the one who experienced the fear. Indeed, as Gasparri states in *De Matrimonio*, vol. 2, no. 1143: "The party who did not give consent cannot supplement it, unless the cause of non-consent ceases, that is, unless the fear is removed, the error is known, etc.; otherwise, since no consent was given from the beginning, it will not be repeated again." And Reiffenstuel, in Volume IV, title on Marriages, no. 337,

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says: "In order for a marriage, made invalid by fear through consummation or cohabitation, to be ratified, it is necessary that the party who experienced the fear knows that the marriage was null." Indeed, the advocate continues, the plaintiff, under oath, ingenuously confesses: "It was only well after all relations with Pauline had ceased, and after my civil marriage with the aforementioned person, that is, for about four years, that the idea came to me to investigate whether there was any case of nullity in my marriage, in order to free myself from the situation in which I find myself." The truth of this assertion, according to the advocate, is confirmed by two circumstances: the age and profession of the plaintiff. At the time of the marriage, he was only twenty years and three months old and earned a salary. But, the advocate continues, in Victor, after the marriage, there was not only ignorance of the impediment, but also the persistence of fear. Indeed, several witnesses clearly state that the fear in the plaintiff never ceased.

[*Latin ed. p. 77*]

ALGERIA. The father, driven by initial fear, had a most pressing need for Paulina's dowry to discharge the heavy debts burdening the family estate. Therefore, the advocate concludes, "it is scarcely comprehensible that the Judge of Algeria, even doubting the firmness of his own judgment, should have resorted to the rule 'in dubio standum est pro validitate matrimonii' [in case of doubt, one must rule in favor of the validity of the marriage]." For, it is not a matter of any marriage of doubtful validity, but of a marriage of doubtful validity due to fear. Indeed, Barbosa, in his *Annotations*, Volume 1, Decision 137, states: "Marriage is not to be favored; nor is its validity to be presumed in case of doubt." And the Sacred Congregation, in its Decisions, number 983, states: "When it is established that the marriage was contracted under fear, we must not favor it; for forced marriages often have bad consequences."

OBSERVATIONS OF THE DEFENDER OF THE VALID MARRIAGE. On the contrary, the defender of the sacrament maintains that there is no impediment of fear; and he observes, in the first place, that in law, fear must be proven by facts. Indeed, in the summary of decisions, number 920, paragraphs 16, 17, and 18, before Molines, it is read: "The instilling of fear to annul an act, as something that must be conclusively proven by facts. And indeed, with the circumstance that the fear fell upon a constant man. If the act was required with some urgency, the proof of violence and fear is not established, which a constant man could not have avoided." But, according to the defender of the marriage, the facts are lacking, the circumstances are lacking, whether of acts of cruelty, or of threats, or of importunate solicitations, by which the father compelled Victor to marry. Victor, the advocate says, for at least five months steadfastly opposed the marriage, as he himself now narrates; while his father continuously urged him to marry Paulina: "The solicitations of my father were continual. Every time

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I saw him, he spoke to me about this marriage. I constantly manifested my repugnance." Therefore, Victor can easily present witnesses who will testify to his declared repugnance and reluctance, and...

[*Latin ed. p. 78*]

78. ALGIERS. The licentiousness of the father has often been seen and heard; especially because the mother, sisters, other relatives, and servants were present. Therefore, they can testify with regard to the circumstances surrounding the matter. Indeed, according to the defender, the narration of these circumstances must be the most accurate in the present controversy, because the matter concerns a grave fear, which, not of itself, but solely from the circumstances in which it is aroused, can acquire the intensity necessary to invalidate a marriage; as Sánchez de Matrimonio states in book 4, dispute 6, number 14. For this reason, the tutor for the bond rightly asks each witness, as the Algiers judge did: "Did you have knowledge of Mr. Victor's repugnance towards this marriage? On what was it based? Did you learn that Mr. Victor's repugnance towards the person of Pauline lasted until the day of the marriage?" But not one of the witnesses, except for the mother, who said: "Two or three days before her marriage, my son came to me and said that this marriage was repugnant to him because of the difference in education that he noticed between my daughters, myself, and this person," saw, heard, noticed, or suspected, throughout that entire period, less than five months, the alleged repugnance. Indeed, the most informed witnesses deny it. The same must be said of the alleged solicitations, as can be gathered from the answers given to the judge by the witnesses questioned. Moreover, Victor does not speak truthfully when he declares himself mild and timid, while proclaiming his father to be severe, formidable, and unyielding in his commands. Indeed, the contrary is demonstrated by the testimony of the witnesses; for Victor had given his name to the military. Nor does the defender of the marriage believe that the father of the plaintiff was imperious and unyielding. The witness Falateuf said: "Monsieur de... his father, was a man of rare intelligence and at the same time of a very noble heart. He adored his family, as he himself was adored." And the tutor for the bond argues that Victor, with a better omen,

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[*Latin ed. p. 79*]

ALGERIA. Seventy-nine witnesses testify that the father, and especially during the imminent death, attributed the blame for the unhappy marriage to himself. Indeed, since parents generally and ought to have a significant role in the arrangement of marriages, either by encouraging this or that marriage, or by discouraging it when marriage has bad consequences, parents, even if no fear or reverential obligation whatsoever intervened, justly deserve to be held responsible, either because they advised it, or

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because they did not prevent it. And in truth, it was said that the fear of being cuckolded was instilled in Victor by his mother, and nevertheless, the mother of the countess, no less than the father himself, is implicated in the blame for this marriage. Furthermore, the most eloquent facts, the defender concludes, demonstrate that Victor was not unwillingly led into marriage with Paulina, and that from the beginning of the marriage, everything was done to win the favor of his wife. He himself confesses: "From the age of three, the separation was almost complete... and this, despite frequent efforts on my part to win her heart, by giving her gifts or by trying to show her that I wanted to please her." Considering these things, the purpose was to be undermined. The question is whether the judgment of the Archdiocesan Court of Algiers should be confirmed or overturned. RESOLUTION. After discussion by the Sacred Office on February 29, 1896, it was decided to respond: The judgment should be confirmed. FROM WHICH WE GATHER: I. To prove reverential fear, acts, circumstances of violence, threats, or importunate requests are required; if these are lacking, the proof of fear is lacking. II. Fear must be accompanied by the circumstance that the fear falls upon a constant man; so that it is not...

[*Latin ed. p. 80*]

80. ALGERIA. It suffices to prove that the act was performed with some degree of zeal, provided that true fear and violence were not demonstrated. III. The proof appears to be lacking in two respects: first, in the repugnance of the bride towards the bridegroom; and second, in the repeated solicitations of the father to sway the son's mind.

JANUARY. FUNERAL. On February 29, 1896. Session 25, Chapter 12, Concerning Reforms.

COMPENDIUM OF THE CASE. Although this controversy pertains more to fact than to law, the nature of the facts and circumstances involved are briefly summarized. The question is whether the Fathers of the Capuchin Order, who had their house, located in the parish of St. John the Baptist, in the locality of Sestri Ponente, unjustly taken from them through civil laws, were able to regain possession of it, and whether, since July of the year 1891, they have been residing there. Furthermore, it is asked whether, when invited by the faithful to bring bodies to the parish of the Blessed Virgin Mary, assumed into Heaven, as is customary, they are legally entitled to carry their own crucifix. This right is denied to them by the parish priest of the aforementioned church of the Blessed Virgin Mary, assumed into Heaven, who contends that such a custom is expressly prohibited by both civil law and customary law; on the contrary, the Capuchin Fathers readily admit that their intention is not to invoke written civil law, but openly to uphold a legitimate custom, which is not disapproved of by civil law itself. Therefore, they contend and have raised the following question: Does it legally belong to the Capuchins to carry a

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crucifix in processions of bodies in this case?

SYNOPTIC DISCUSSION.

DEFENSE OF THE PARISH PRIEST. The defender, in order to clearly present the principles of civil law, cites the following from the renowned Gardellini:

[*Latin ed. p. 81*]

JANUARIUS 81, n. 4468: "There are in this our collection decrees which declare and order that in funerals, only one cross should be raised in the burying church, so that, if I were to undertake to demonstrate this, I would burden myself with a useless and reprehensible labor." The Orator contends that this custom, contrary to this law, is disapproved of, according to the Constitution *Ad perpetuam rei memoriam* of June 17, 1614, by Paul V, which commands Bishops and other prelates, and parish priests wherever they may be, to observe inviolably the prescriptions of the Roman Ritual. Therefore, the Supreme Pontiff Benedict XIII, in the Roman Council celebrated in the year 1725, commanded the Bishops "that all things contrary to the prescriptions of the Roman Pontifical, and of the Ceremonial of Bishops, or of the rubrics of the Missal, Breviary, and Ritual, which they may have found to have occurred in the churches, they should condemn as abuses and corruptions, and should strive to remove them entirely, whatever obstacle may be interposed, or whatever unmemorable custom may be." The Patron, moreover, asserts that the Holy Congregation of Rites, in Abellinum, on April 28, 1862, interprets this law, and this is found in the authentic collection of decrees, n. 5352, in which, after considering the doubt "Whether parish priests of the city of Abellinum may raise their own cross in leading funerals, when the chapter of the cathedral is not present, or only one cross, and whether that cross should be that of the burying church?" The Holy Congregation of Rites decided as follows: "Negatively to the first part, affirmatively to the second." However, in this case, the custom does not prevail in favor of the Capuchins, the Advocate asserts, based on sworn and legal testimony, or, as they say, based on the public notoriety of priests and laymen, who have had an uninterrupted residence in the same city, commonly called Sestri Ponente. The Orator insists, saying that, in summary, there are countless testimonies of priests and parish priests asserting that the Capuchins of that place have never brought their own cross in the aforementioned funeral processions. Acts, Volume XXIX, page CCCXXXVII. 6.

[*Latin ed. p. 82*]

82. IANUEN. The Advocate observes that, even if a custom existed, this could not, in general, be approved, since it would constitute a corruption of justice, especially since the rights of the parish priests must be protected

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and respected; and, in particular, he states that, according to the will of his client, it is to be condemned, because he notes that the revenues of the parish priests suffer harm if the Fathers Capuchin are admitted to accompany the bodies, because, in order to carry the cross, three or four at least must be invited by the faithful, who, in order to meet the expenses, will therefore prefer the secular priests. DEFENSE OF THE CAPUCHINS. On the contrary, the General Procurator of the Order of the Capuchins, with regard to what the Archpriest asserted in the aforementioned document, first notes that the Capuchins could not have carried their own cross in the funeral processions before the month of October; because in the month of July they acquired possession of the religious house, and began to restore it, but only in the month of October was the religious community established there. Secondly, he denies that the religious caused scandal or provided an occasion for disturbances, but that they merely withdrew from the funeral procession, protesting that they had the right to carry their own cross; therefore, because this was prevented by the Archpriest, they no longer participated in accompanying the bodies. Furthermore, he denies that the parish priest of St. John the Baptist, recently deceased, whose territory includes the religious house, and the religious themselves, forbade them from carrying the cross. Then, the Procurator points out that the question is not about a common right, but whether a custom exists that is favorable to the intention of the Capuchins; and he states that this is not condemned by law, but rather is supported by several decisions of the Holy Congregation, from which it is clearly demonstrated that "Regulars, indeed, even Confraternities, may carry their own cross in a funeral procession, if such a custom prevails in that place, as Pignatelli states in volume 4, Consultation 58, 14, 15, and elsewhere." He cites as an example the response of the Holy Congregation of August 14.

[*Latin ed. p. 83*]

January 8th, 1880, in Pavia (1), a decision was rendered in favor of another cross, notwithstanding a synodal prescription: as can be seen from the reasoning for the decision cited in the Folio: - there, "From Benedict XIV (De Syn. Dioec. L. 11), it does not follow that the synodal constitution, which seeks to abolish a custom already existing in the diocese, introduces a novelty. Therefore, the synodal law, in the matter (in the aforementioned case of Pavia), since it introduces novelty and prejudice, seems to be of no effect. For a custom contrary to the Ceremonial will certainly be a corruption, when the divine worship suffers detriment. But no prejudice is introduced in the matter, if another cross is erected behind the cathedral—" Furthermore, a Royal decision is cited in Troia, whose conclusion and reasoning are as follows: "The Chapter and Canons of the Collegiate Church of Saint Mary of Foggia, alleging that they were preventing the Regulars of that place from, on the occasion of funerals, raising their own cross when-

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ever the said Chapter was present, were summoned to judgment before the A. C., who, in favor of the Regulars, rendered a judgment both on the merits and on the maintenance of their rights. And in the case appealed by the Chapter to me, I proposed the question: - Whether, and on whose merits? - which was resolved AFFIRMATIVELY FOR THE REGULARS. Although, according to the Decrees of the Holy Congregations concerning funerals, all must proceed under only one cross of that church to which the body is to be carried for burial, and if the Chapter, or the Cathedral, or the Collegiate Church is present, even if the body is carried elsewhere, only the cross of the Chapter may be raised, under which all must proceed, nevertheless, the aforementioned [decision] does not hold, when, limiting the rule, a memorable custom is present to the contrary, as Pignatelli, Cons. 58, no. 15, and Cons. 74, throughout book 5; Barbosa, De iure eccles., book 11, chapter 7, no. 78; De Luca, De regni. Disc. 47, no. 2; Rota, etc." (I) Recole, Vol. XIV, 136.

[*Latin ed. p. 84*]

84. IANUEN. And therefore, "Since, from what has been presented in the contemporary decision, it is sufficiently established that the Regular Canons have a valid right regarding the faculty of raising their own cross when burying the dead, even with the involvement of the Chapter and the Canons of the Collegiate Church of Saint Mary in Foggia, so too, in the present doubt concerning the provision of sustenance, the answer was favorable to the Regular Canons. For sustenance is given to the one who possesses [property], § Retinendae, Inst. De inter d. Therefore, since in the present case there is no doubt about the possession of the Regular Canons, not only because they themselves have mere possession, but also because they hold it with the qualities of inalienability, as has been clearly established regarding their valid right, sustenance is rightfully granted to them." Furthermore, Benedict XIV, while still Prosper Lambertini and Archbishop of Bologna, testified: "Since, due to ancient custom in this city and diocese (of Bologna), this [law of one cross] is not observed at all, but as many crosses are carried as there are Sodalities or Orders of Regular Canons present at the funeral procession, as was discovered by the Archiepiscopal Cardinal Gabrielis Palaeoti, the first Archbishop of this city, in these words: 'We expressly command that all and each should assemble at the appointed hour under their own banners and crosses in the place where the deceased is, so that he may be buried; this practice is to be observed even if the Chapter of the Metropolitan Church is present; therefore, for the sake of antiquity, we do not wish to establish anything new, and we permit the customs already introduced by our predecessors...' Instit. eccles. CV, no. 27, ed. Prati, page 458. Proceeding more directly to the facts, the Advocate points out that he is being challenged by the Archpriest regarding a custom interrupted by the Capuchins. For, given and conceded that this custom

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existed in favor of the Religious, they spontaneously reported that for 30 years in the Vicariates of Sestri Ponente, Rivaro Lo, Sanpierdarena, and Prà. Commenting on these words, the Advocate says: "It is truly surprising that the Archpriest should speak of a spontaneous renunciation."

[*Latin ed. p. 85*]

GENOA, 85. According to legitimate custom; for the opponent, having spoken in this manner, seems at the very least clearly to admit the existence of a custom, which he subsequently claims was interrupted, namely, by the Fathers being forced to emigrate from their own seats due to the cruel violence of the government's oppressor. Regarding the places which the Archpriest cites as proof of voluntary and spontaneous abandonment, the Advocate points out: 1° That in the place of Rivarolo, there is no Capuchin convent and no hospice; and in the place of Sanpierdarena, there is no convent and no hospice! 2° That in the place of Campi (which the Archpriest only fails to mention), a convent certainly exists, and indeed it is one of the first that the Brothers of the Genoa Province attempted to open after the civil suppression. But it must be known that in Campi, as also in other places, the regular community, having been uprooted by the suppression and thus dispersed, when it was able to re-establish a convent almost secretly, and thus to carry the cross and participate in processions, or to attend funerals in Campi, or in Rivarolo or Sampierdarena, it was forced to abstain from the sound of the external bell, due to the imperious prohibitions of the civil authorities. And even today, it proceeds with prudent caution, except in those nearby places, such as in Bozzoli Ligure, in which those same officials show themselves to be benevolent, or at least not so adverse, towards the Brothers. And for this reason, the Advocate states, that in the aforementioned place of Bozzoli, the Brothers, having been called to funerals, are present, and indeed with their own cross. In other places of the same Province, such as Finalmarina, Finalbergo, Finalpia, Loano, Savona, San Remo, Sarzana, and others, due to the benevolence or tolerance of the same civil authority, the Brothers were able to continue their common life without any interruption, even immediately after the suppression, and they have always participated in public processions and funerals, always under their own cross. Finally, the damage feared by the Archpriest from the Religious, due to the different classes of funerals, the Advocate believes to be fabricated. For, he says, the classifications of funerals are not found only in the church of the Most Holy Assumption in Sestri, but in all the world.

[*Latin ed. p. 86*]

86. In the parishes of *Ianuensis*, it is generally the case that the presence of the cross of the Regulars either hinders or modifies the proceedings. Furthermore, the Advocate notes that different classes of funerals do not

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present an obstacle, because if the heirs of the deceased request a funeral of a certain class, the parish priest will determine the number of priests suitable for that class, according to his established custom, and then the heirs will call the number of Religious, but not more, that are required. Moreover, the Advocate points out that it is always proper for the heirs to invite Religious to the funeral, because the most well-known decisions of the Apostolic See are on this matter. Thus, in *Senarum*, on December 7, 1641, the Sacred Congregation of Rites decreed: "The number of Regulars who must attend the funeral rests with the heirs, and not with the parish priests, notwithstanding the decree of the Synod." And the Sacred Congregation of Bishops and Regulars, on December 16, 1729, decreed, in a case concerning the Carmelites, that Religious can be called by the heirs without the knowledge of the parish priest, and that even if the parish priest is unaware, he cannot prevent them, but rather must provide them with the same benefit for the Masses to be celebrated in the parish church, in the presence of the deceased. As for the synodal prescription, the Advocate believes that the decree is favorable to them, in which it is stated: "If the heirs of the deceased, or those who are arranging the funeral, wish to invite more secular clergy, their will shall be fully observed. If, however, there are no secular clergy in the town, or if all those who have been invited are not present, it will be up to the heirs to invite as many Regulars as they wish, provided they are from the local community." Finally, explaining the list of witnesses, the Advocate notes that the *Ianuensis* Province of the Capuchin Fathers includes five dioceses, besides *Clavarensem*: namely, *Ianuensem*, Savona, Albenga, Sarzana, and Ventimiglia. Furthermore, in the documents, the custom of the Capuchins is attested in the Curias of Ventimiglia, Albenga, Sarzana, Limena, Brugnato, and Savona.

[*Latin ed. p. 87*]

GENOA, 87. Further testimonies are added from the parish priests of Voltaggio, and Sestri Levante, as well as from numerous other Canons, Priests, Religious, and Secular individuals of the best reputation and of diverse conditions, who all, with one voice and according to their conscience, declare and testify that the Capuchins have been, and are, within the boundaries of the respective locality, raising their own cross in public and funeral processions, without any objection. Because it is desired that the declaration of the very archiepiscopal Curia of Genoa be explicitly stated in the list of depositions, the Procurator notes that it is easily understood that the Provincial Minister of the Capuchins could not, according to his judgment, present any objections to the aforementioned Curia, which, given the current circumstances, should not appear to be supporting one side or the other. Furthermore, the Capuchins humbly requested the Genoese Curia to formally receive and record the testimonies of the witnesses. Therefore, in the aforementioned list, 34 witnesses,

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sworn and questioned, formally testified before the Reverend Fathers P. Canevello, Pro-Vicar General, and before the Chancellor of the Curia, regarding the customary law, whether in Genoa or in Sestri, and declared what they had seen and experienced, and exercised the right in question, in a concrete and proper manner. Concerning Sestri Levante itself, the Procurator notes that the aforementioned Minister, in order not to appear to be increasing the agitation against the Capuchins, considered it more appropriate and prudent to hear only a few witnesses; who, regarding what they have seen and experienced, and regarding the exercise of the right in question, testified in a concrete and proper manner. Therefore, considering these points of law and fact, it seems to the Procurator that the Capuchin Minor Friars of the locality of Sestri Levante, due to the proven custom, according to sworn and authentic testimonies of superiors and brothers, both in Sestri and throughout the Province, a custom never legitimately interrupted, have the right, both in public and funeral processions, to raise their cross, subject to other parochial rights. Having considered these points on both sides, the intention is to moderate.

[*Latin ed. p. 88*]

88. Regarding the carrying of the cross: Is it permissible, by law, to carry the cross in funeral processions within associations of the faithful in this case? RESOLUTION. The Sacred Congregation, after deliberation on February 29, 1896, decided to respond affirmatively, and moreover. FROM THE PREMISES: I. Customs which wound the divine worship are to be condemned, but not those which cause no prejudice either to the piety of the faithful, or to the decorum of the Church. II. According to the *Caeremoniale*, all should proceed under a single cross in funeral processions; nevertheless, according to the constant jurisprudence of the Church, such a law is modified by contrary custom, from time immemorial. III. It has been seen in the documents that the Fathers held that it is a good and lawful practice for Religious to raise their own cross when associating with the deceased; hence, the response was favorable to the maintenance of that same right, which custom has established. UDINE. Dispensation regarding irregularity, March 28, 1896. Through summary petitions. SUMMARY OF THE CASE. The priest, John Baptist Mantoessi, vicar of the parish of Pradamano (archdiocese of Udine), last year, on the feast of the Most Holy Virgin Mary, known as the Rosary, while holding artificially prepared fires in his right hand, suffered a grievous wound, and thereby fell into irregularity due to a defect of the body. Indeed, from this misfortune, he suffered the amputation of the last phalanges of the fingers of his right hand, namely the thumb and index finger, as well as the amputation of the second and third phalanges of the index finger of

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the same hand.

[*Latin ed. p. 89*]

UTINENSIS 89. The Ordinary earnestly prays for grace, the Master of Ceremonies reported that the petitioner could, with some difficulty, fulfill what is necessary concerning the consecration of wine and the host. Concerning Dispensations. Although, as the most illustrious Saint [John Henry] Newman notes (lib. I, Title XX, On the Body, page 186), "the practice of the Holy See is such that a dispensation from irregularity concerning promoted [clergy], that is, an irregularity arising after the reception of the order of presbyterate, is more readily granted than concerning those who are being promoted, even though the same defect is present, nevertheless, there are examples that demonstrate that even to priests, such a dispensation has sometimes not been granted." Thus, in chapter II, On a sick cleric, the celebration of Mass is forbidden to a priest whose two fingers, along with half of the palm of the hand, had been severed from the hand. On January 24, 1864, in Burgen, the Sacred Congregation granted no dispensation to a certain Joachim de Zaias, who had contracted a burn on the tendons of the thumb and index finger of his right hand, and who lacked half of the phalanx of each finger, although the favorable opinion of the Masters of Ceremonies and the recommendation of the Archpriest were added to the prayers. For wise reasons, irregularity due to a bodily defect is introduced by the Church. If, already in the Old Testament, those who suffered from a notable defect were excluded from the service of the altar, much more so in the New Testament, in which the shadow is banished by truth, those whose bodily defects might provoke horror, or laughter, or admiration in the people, are to be excluded from celebrating the sacred Mass, which offends the decency and decorum of divine worship. A dispensation should be granted. But, on the other hand, it is clear that a dispensation is more readily granted when the defect is contracted without fault or culpability on the part of the promoted, and when laudable personal qualities, as well as the benefit to the Church, suggest a more lenient course. A dispensation should be denied.

[*Latin ed. p. 90*]

90. The Udinese [Bishop] requests that this be done, as it appears to be the case. For the petitioner is not only commended by the General Vicar with the highest praise, as being endowed with the best of morals; but it is also stated that the region suffers from a lack of priests. Furthermore, there are abundant examples from the Sacred Congregation [of Rites] regarding dispensations from such deficiencies in the celebration of the Mass, from which it is clear that the rigor of the canons in this matter has been tempered with benevolence. Thus, on January 28, 1865, a dispensation was granted to a cleric who, through a chance occurrence, had lost the use of the

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index finger of his right hand. For the Sacred Congregation considered it fitting, for the sake of the dispensation, that the missing finger be replaced by the thumb, with the words "with the thumb." Similarly, in Novara, on June 27, 1891, a dispensation was granted to a petitioner to pronounce the words "with the thumb," although the thumb of his right hand lacked one phalanx and the index finger lacked two phalanges; and recently, in Cologne, on May 25, 1895 (1), the Sacred Congregation allowed a certain person to be initiated into the sacred orders, stating: "At the discretion and conscience of the Archbishop, provided that a true need of the Church exists, with the words 'with the thumb.'" In this case, it concerned a certain young man named Johann Kebren, who was still engaged in literary studies at the Kempense gymnasium and was afflicted with a serious defect in his left hand, which was described by the master of ceremonies as follows: "Johann Kebren has a poorly formed left hand from birth. Only the thumb is well formed; the other four fingers are conjoined, and a membrane connects them together; moreover, they are smaller than the fingers of the right hand, so that they do not exceed half their length. They are soft and weak, like the fingers of a child. Even the thumb and the rest of the left hand are smaller than the thumb and the rest of the right hand." In light of these observations, the question was raised as to how the words should be pronounced.

RESOLUTION. The Sacred Congregation, after consideration, on March 28, 1896, decided to respond: "For the sake of the dispensation, with the words 'with the thumb.'"

(1) See Vol. XXIV, 207 and Vol. XXVIII, 261.

[*Latin ed. p. 91*]

91 MEXICO, CONCERNING A FACULTY. On March 28, 1896, the following was presented: Through brief prayers. The Archbishop of Mexico offers the following: "Most Holy Father, Prosper Maria Alarcon, Archbishop of Mexico, prostrate before Your Holiness, explains as follows: Two years ago, I requested a faculty from the Holy See, so that the parish priests and other priests of this Archdiocese, as necessity demanded, might celebrate Mass three times on Sundays and other holy days. This faculty was granted to me for two years by the Apostolic See, and at the same time, I was admonished that this abuse of celebrating three Masses on the aforementioned days should be completely eliminated. However, Most Blessed Father, there are very serious reasons and causes for which I again and again implore and beseech Your Holiness, so that this faculty may again be granted to me by the Apostolic See. For, in the first place, this custom of celebrating three Masses on the aforementioned days, due to the distance of the places and the lack of priests, has been beneficial for many years, in the times of our predecessors, and also for us; if it were now removed, a large part of the faithful would undoubtedly be deprived of this

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great benefit, and of the greatest aid for strengthening their faith. Indeed, since the inhabitants of these regions, scattered in various places within the same parish, who are largely Indians, have always been susceptible to idolatry, either through ignorance or through a lack of other spiritual aids due to the great difficulties of place and time; I fear that, deprived even of the salutary benefit of the Holy Sacrifice of the Mass, which they are most eager to have celebrated, they may return to their former idolatry. May God avert this, which I most earnestly pray; for I believe that the Indians are not very firm in their faith, and that Protestants will easily lead them astray, and they will be caught unawares, as has already happened in some cases, as recorded in COMPENDIUM FACTI."

[*Latin ed. p. 92*]

92. It has happened in MEXICANA that certain individuals have sought to undermine me, and this is a matter of grave concern. I have no doubt that this would provide an opportunity for envy to arise among the priests in the Indies, should they believe that they are being deprived of the Mass by me, which has never actually occurred. Furthermore, those whom the Protestants have already ensnared in their clutches cannot be brought back to the true faith through any exhortations, offices, or warnings. Many evils have already arisen in those places infected by this error; and these, indeed, will be even greater evils, if a place is abandoned to the Protestants, who, with the utmost eagerness, would scour all places, depriving the faithful of the benefit of the Mass.

"Based on these efforts and these most serious reasons, Most Blessed Father, I earnestly and humbly implore your piety to have regard for this flock, so that you may deign to grant this faculty, from the fullness of your power. In the meantime, I pledge my reverence and obedience to you."

The same Ordinary offered similar prayers in the year 1878. The proposals, presented through Summaria Precum, which this response was to dismiss, were dated December 20, 1879: (1) "For a grace of five years, with the understanding and in accordance with the Most Reverend [Archbishop]."

It should be especially understood by the Archbishop in the E E. P. P. [Episcopal Proceedings] that this is to signify: "that you never allow a repetition of the Mass beyond the third Mass, and for no reason whatsoever; and also that, during the time of this concession, you strive with prudence and skill to arrange matters in accordance with the existing discipline, so that the needs of the people are adequately met through the proper distribution [of Masses]."

The grace of the concession was extended until such time. However, when the Ordinary had not yet sufficiently fulfilled the prescriptions, as expressed in the E E. P. P., it was again urged that matters be brought into accordance with the law; to which the Archbishop responded with the letters mentioned above.

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A SYNOPTIC ACCOUNT: THE GRACE SEEMS TO BE DENIED.

In this matter, it seems appropriate to recall the recent response given by the S. C. C. [Sacred Congregation of the Council] in (1) Recole Vol. XIII, 340.

[*Latin ed. p. 93*]

MEXICO, 93, number 1 – Saint James of Costa Rica (1): "Regarding the faculty of saying two Masses," dated July 6, 1893; in which the Bishop, in his report on the state of the Church, noted that in some parishes the population ranged from 5,000 to 18,000 inhabitants, and that in each church there was only one or two priests, one of whom was sometimes infirm or absent. However, the Sacred Congregation responded, "For the benefit of the aforementioned parishes, where only two priests are present, one of them may say two Masses, for a period of ten years – excluding, however, any case in which any of the priests may say a third Mass." The reason for this most wise decision will become clear if ecclesiastical discipline is examined more deeply in this matter. In the early times of the Church, the small number of priests in proportion to the number of the faithful required that the same priest celebrate multiple Masses on the same day. Cardinal Bona, *Rer. liturg.*, book 1, chapter 18, section 5 and following; Benedict XIV, *De Syn. dioeces*, book 5, chapter 8, section 8. However, when this custom, which had originated from the small number of ministers and the ancient piety of that age, began to spread widely and, with the increase in the number of priests, was corrupted and turned into a source of shameful avarice and profit, the need to regulate it arose. Hence, the Council of Saleguna, above all, decreed in the 11th century that each priest should not presume to celebrate more than three Masses in a day. Thomas, *De vet. et nov. Eccles. discipl.*, part 1, 3, I, chapter 72, section 3. Furthermore, as the abuse increased, several Popes declared that, in particular cases, each priest should celebrate only one Mass. Finally, Innocent III, in the decree *Constatasti, de celebrat. Miss.*, solemnly defined that "Except on the feast of the Nativity of the Lord, unless necessity dictates otherwise, it suffices for a priest to celebrate only one Mass in a day." Honorius III also stated the same in the decree *De referente*, in the same title, in which he adopted the opinion of Innocent III as a settled and established matter, namely that "each priest, under any circumstances..."

[*Latin ed. p. 94*]

94. In MEXICANA, it suffices to celebrate Mass once a day. Therefore, Innocent [Innocentii] always observed, and the entire Church observes, the law of Innocent. Although a necessity may be an exception to this general law, not every necessity is sufficient, but rather, that necessity is required which cannot be met in any other way. Having briefly explained these matters concerning the ancient and present practice of the Church regarding

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the repetition of Mass, it does not seem that the request of the speaker should be granted. And indeed, after carefully considering the reasons presented by the Bishop, for the first time in the year 1878, it appears that the reason for obtaining such a dispensation is derived from the poverty of the faithful, who are in such dire straits that they are unable to provide the customary stipend to the priest who celebrates one Mass; from which it seems to follow that if the faithful were not so impoverished, such a repetition of Mass would not be necessary. However, the poverty of the faithful does not help in obtaining this dispensation, since the Archbishop can adequately provide for the stipends of Masses from pious offerings and other goods of the Church, in such a way that this would prevent other evils that are lamented. It is true that the scarcity of priests is also brought up, which perhaps seems to be a sufficient reason for granting an indulgence. But if one considers that these priests repeat Mass to the extent that they receive income from Masses, a stronger reason arises for denying the indulgence and suppressing the abuse. It is known that in the faculty of saying two Masses, which is granted by the Sacred Congregation, it is expressly stipulated that no alms should be received for the second Mass. Nor does it help to bring up the custom of many years, as if this were endowed with the nature of prescription: because although the ecclesiastical law prohibits a priest from celebrating more than once a day, many things which have only been sanctioned by the authority of the Church cannot be prescribed. Since the entire discipline has been introduced to suppress many abuses, it would easily happen that, through human malice, the same evils would constantly recur in the Church of God, to the great detriment of the faithful and of religion.

[*Latin ed. p. 95*]

MEXICANA 95. Therefore, it is the case that a custom of this kind, insofar as it pertains to matters subject to the universal sanctions of the Church, should rather be considered a corruption of the law. A dispensation for this seems advisable. However, if the reasons presented by the Archbishop are considered, his petitions do not appear to be to be rejected. For, there is a small number of priests, which is constantly diminishing, and is entirely insufficient for the care of the faithful. Hence, unless the requested permission is granted, it is quite impossible for the faithful to fulfill the ecclesiastical precept regarding the hearing of Mass. Furthermore, as the Archbishop reports, the faithful living outside the city and in villages are very devoted to religious practices; if they do not attend the celebration of Mass, they could easily fall into idolatrous practices. The occasion of attending Mass brings about this further good, that people of different complexions gather together in one assembly, and charity is fostered and increased among them. These reasons seem to present a case of necessity, as mentioned by Innocent III in his Constitution, which exempts from the

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general rule, and which the Doctors, among whom is Benedict XIV, recall to the state in which the faithful would be deprived of Mass, unless it were celebrated more frequently by the same. Moreover, by common consent, it is permitted to celebrate Mass more frequently to a parish priest who presides over several parishes, because not all the faithful can gather in the same church. In our case, we have parish priests who serve many widely separated populations, for whom it is quite impossible to attend the same church. Furthermore, from the observance of both laws, a saying has arisen: that the same holds true in law where the same reason exists. Since in our case, the very same reason is verified, the necessity of granting this same permission is evident. Furthermore, the Sacred Congregation has not infrequently granted a dispensation for the repetition of the Sacrifice, even on days of fasting, so that the pious desires of the faithful towards divine worship would not be frustrated: Argentina, September 17, 1859, Lingonen, and Turonen, August 24, 1878, per Summ. prec. (1). Therefore, for a greater reason, it seems permissible to grant a dispensation for three (1) times.

[*Latin ed. p. 96*]

96 In MEXICANA, the celebration of Mass on feast days, during which the faithful are bound by the precept to attend Mass, is permitted. It does not present a difficulty that traveling priests receive a salary, for this is not, in the least, given for the application of a second or third Mass, but solely in consideration of the labor, which, as it is known, has been permitted by the Sacred Congregation of the Council. In the "Eleemosynae Missarum" of March 23, 1861, among the Summaries of Proceedings, in which certain doubts were proposed: 1. Whether pastors who, in order to fulfill the intention of the founders, say two Masses on Sundays and feast days, and apply them for the founders of the Masses, can receive a salary from the fund of the Masses for their particular labor. 2. Whether pastors who, due to circumstances, celebrate Mass twice on Sundays and feast days, either in the parish church or in a different location, while simultaneously imparting Christian doctrine, can receive a fixed annual salary offered by the parishioners for their particular labor and industry? The response was: It can be permitted, at the prudent discretion of the Bishop, some remuneration in consideration of the labor and inconvenience, excluding any alms for the application of the Mass. After briefly considering these matters, the question arose as to how the Archbishop of MEXICANA should proceed. RESOLUTION. The Sacred Congregation of the Council, after deliberation on March 28, 1896, decided to respond: For the sake of grace, for a period of five years, in the form and terms of the decree of December 20, 1879, having consulted with the Most Reverend GAUDIENSI. OBLIGATION. On February 29, 1896, Session 23, chapter 18, concerning reforms. For the establishment of a Seminary in the city of Milevitan, in accordance with the proceedings of the Council of Tridentini, a decree was issued in the year

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1575 by Petrus Duxina, Inquisitor and Diocesan Visitor. SUMMARY OF THE MATTER.

[*Latin ed. p. 97*]

GAUDISIEN. 97 apostolicus; which, since it was hindered from being carried out, was proposed by Thomas Gargallo, Bishop of Milevum, in the year 1591, decreeing that ecclesiastical benefices and goods should be subject to a tax, called the "media decima," from which, out of the revenues of said benefices, five out of every hundred should be given to the Seminary. – However, in the following year, in place of the Seminary, a College of the Society of Jesus was established, as ordered by Pope Clement VIII, to which the tax of the media decima was assigned. In the year 1660, the entire clergy of Milevum, arguing that the College, being richly endowed, did not need to pay the tax, brought the matter before the Roman Rota, which repeatedly examined this case; but after lengthy deliberations, striving to settle the matter peacefully, they decided through a Transaction, by which it was stipulated that those individually obligated to pay the tax to the College should be released from this burden, by paying a single sum of seven annuities. Certainly, not all administrators of ecclesiastical goods accepted this transaction; for some rather chose to continue making certain payments, rather than accepting the transaction. However, with regard to the present controversy, it is necessary to know how the Church of Gaudisien acted in this matter. This had already been raised to the status of a Collegiate Church by the Bishop of Milevum in the year 1623, with six canonical prebends established from the goods of the same Church, one of which was destined for the Archpresbyterate. Subsequently, up to ten such benefices increased, because in the year 1623 a Theological prebend was added, endowed from a pious legacy of a certain Nicholas Angel Maccanutii; in the year 1662, two other prebends were established from the goods of the Capitular Table; finally, in the year 1672, a tenth canonical prebend was founded from the goods of certain suppressed rural churches. Meanwhile, Pope Alexander VII, in the year 1663, recognized the title and rights of the Collegiate Church and confirmed the Church of Gaudisien by his Decree. – Later, six other canonical prebends were established in this Collegiate Church, namely five in the year 1729, and a sixth in the year 1744; the first ten Acts, Volume XXIX, page CCCXXXVII. 7

[*Latin ed. p. 98*]

98. The canons are divided into two groups: those of the first foundation, and those of the second foundation. The former are involved in this dispute, while the latter have no part in it. The question at hand concerns whether the canons of the first foundation are still obligated to pay a tax known as the "media decima" (half-tithe). This tax is no longer collected by the seminary itself, but by the episcopal table of Gaudisiensis. In fact, when

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the episcopal table was established in 1864, it was endowed by Pope Pius IX. However, this tax no longer corresponds to the "media decima" or the payment of five for every hundred; because, by a decree dated October 23, 1741, issued by Paul Alpheran de Bussan, Bishop of Milevitan, this tax, which was to be paid by the seminary, was reduced to three for every hundred, for those benefices that were not exempt from this burden, according to the aforementioned Transaction. This was also recently confirmed and decreed by Caietan Pace-Forno in letters dated July 22, 1859. However, the canons of the first foundation argue that they are not obligated to pay this tax to the episcopal table, as it is a substitute for the rights of the seminary, since the Church of Gaudisiensis, in fact, entered into the Transaction in 1677, and therefore paid a certain sum of money once and for all to redeem its obligation. Insisting on this point, the canons in 1893 refused to pay this tax. However, the treasurer of the episcopal table appealed to the Sacred Congregation of the Council, in order to compel the canons of the first foundation to fulfill their customary payment, and the Bishop also requested that the matter be formally brought before the Sacred Congregation.

A Synopsis of the Arguments:

DEFENSE OF THE EPISCOPAL TABLE. The procurator for the Bishop first recalls that the Church of Gaudisiensis, by virtue of the Transaction initiated in 1677, made a payment to redeem itself from the annual tax. However, the advocate insists that this payment was made by the Church for its own goods, distinct from the canonical tithes that were already established since 1623. In reality,

[*Latin ed. p. 99*]

GAUDISIEN. 99. The Defender argued that the Canons of the first establishment have, until our time, fulfilled this obligation, namely for more than two hundred years; whereas, on the other hand, the Canons of the second establishment, when the Bishop of Alpheram, by decree of the year 1741, reduced the tax to the amount of three per cent to be paid from unredeemed benefices according to the aforementioned agreement, these Canons protested that they were not obligated to make this payment, because their prebends had been established from goods of the Church already redeemed, and that such exemption from the burden should be quickly recognized. Therefore, the Advocate concludes, if the Canons of the first establishment were unable to use this simple defense, it is a certain indication that they were not exempt from the disputed tax by virtue of the agreement. Then, repeating the question of the payment, the Advocate pointed out that there can be no doubt about the authority of the Bishop to impose a tax or contribution for the erection and maintenance of the Seminary, according to the decree of the Council of Trent, Session 23, chapter 18, concerning reforms, so that, as Cardinal De Luca teaches, in *Annotationes ad Sac. Conc. Trid.*, Discourse 25, number 13, it should be

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established as a general rule: "that where a special indult of the Apostolic See does not suggest a limitation, no privileged exemption should be granted, not even to the Bishop himself." The Defender admitted that the contribution from benefices, demanded by the Council of Trent, is for the support of the Seminary, and indeed is not absolute, but constitutes a subsidiary remedy, until, that is, the Seminary is adequately provided for, and he noted that, by apostolic authority, it has been established that, in the erection of the *novae Dioecesis gaudisiensis*, the tax or contribution, which had already been imposed on all benefices, not redeemed, was fully paid to the episcopal table, with full right. From this, according to the Advocate, it is also clear that the aforementioned provision cannot be applied to this assignment made by the Pope; because, by this, the aforementioned tax or contribution will cease to be a subsidiary remedy, and will acquire perpetuity. Indeed, on the one hand, concerning the absolute power of the Pope over benefices...

[*Latin ed. p. 100*]

100 GOZO. It cannot be doubted that these are perpetual burdens; on the other hand, it is clearly established that the Supreme Pontiff intended to use this power precisely in the matter under discussion, as evidenced by the Apostolic Bulls for the erection of the new Diocese of Gozo, issued on September 16, 1864. In these documents, a fixed annual provision of 2749 Roman scudi is established for the episcopal table of Gozo, and five fixed and perpetual charges are assigned from this provision, among which the third is the tax or contribution of Benefices. Furthermore, the Advocate states that the opposing party cannot appeal to the rule concerning substituted revenues to demonstrate that the assignment made to the episcopal table in place of the seminary should cease; for this rule cannot apply in this case, not only because of the difference between the substituted revenue and the one in whose place the substitution is made, but also and especially because the assignment to the episcopal table was made not in a subsidiary manner, but absolutely and permanently, by a Pontifical decree. However, since the opponents rely more on a question of fact, namely that their benefices were redeemed by virtue of the aforementioned agreement, the Advocate replies that facts are not presumed, but must be proven by those who allege them. Therefore, let the opponents finally present the document proving the alleged redemption, the Advocate exclaims. However, the Advocate believes that the existence of such a document is clearly contradicted by the solemn, continuous, and peaceful payment of the aforementioned tax by the Canons of the first erection, from the year 1677, when the alleged redemption was said to have taken place, until our present time. From the very beginning of the collegiate Chapter of Gozo, the Patron recounts, it is clear from the records relating to the execution of the aforementioned concordat and amicable agreement, that while the mother

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church paid the tax contingent upon it, the Canons of the same Chapter were also burdened with the same contribution for their own benefices.

[*Latin ed. p. 101*]

GAUDISIEN. 101. The transactions concerning the matter are between D. Charles Cappet, Procurator for the Regular Canons of the Cathedral Church of Melevitana, and the Reverend Peter Gherard, general procurator of the Society of Jesus. Therefore, the Advocate urges, unless a clear and evident document of full redemption is presented, the Canons will be entirely deprived of their rights for a period of two hundred years and beyond. To resolve the difficulties, the Procurator notes that there are two instruments of the redemption contract in which, perhaps, the opposing party places its hopes; one which pertains to the goods of certain seventy-three Benefices, the contributions of which were assigned to the Canons of the first erection in Capsa, the other which refers to the goods of the mother Church. However, above all, he generally observes that there exist two species of such redemption contracts; there are contracts in which the parties simply agree on the sum to be paid for the redemption; there are others in which it is declared that the agreed sum has been paid. In the catalog of benefices, those benefices for whose redemption contracts of only the first species were initiated are marked with the word "Accordati," which is not sufficient for exemption from taxes or contributions to be paid; but further, a declaration of the payment of the agreed sum is required, so that, in the case of doubt concerning the redemption of any benefice, the contract of the payment of the agreed sum should be considered. With these premises, concerning the first point, the Advocate concedes that those seventy-three benefices were redeemed; but he denies that those benefices belong to the Canons of the first erection, because their goods are not incorporated into the Mensa Capitulari. Also, concerning the second point, the Advocate readily admits that, in the year 1677, the goods of the mother Church were redeemed, and therefore, that Church has not paid the tax due to it since that time. But, he adds, it cannot be asserted that the prebends of the Canons of the first erection were redeemed, as the Canons of the second erection have indeed been able to affirm, whose prebends were constituted from those goods.

[*Latin ed. p. 102*]

102. The Advocates argue that the endowments of the Church, having already been redeemed by the Church itself, cannot be subject to any further claim. However, the Patron replies that this argument is not valid for the Canonries of the first foundation, provided that these endowments were not entirely constituted from the goods of the Church's endowment, but only in part, and moreover, that they were constituted in part before the Church's endowment had redeemed its own goods. For, when the goods of the Church's endowment were redeemed in the year 1667, the afore-

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mentioned Canonries were already fully established, partly from the goods of the Church's endowment, specifically set aside and separated from the other goods of the same Church; partly from the alms of Masses, and partly from the pious bequest of Maccanutii; and their establishment had already been confirmed in the year 1663 by Alexander VII; indeed, each was already burdened with its own contribution. However, since the opposing party claims that they paid the same tax or contribution, either before or after the establishment of the Canonries of the first foundation, up to the year 1667, to the Church's endowment, after the separation of the Canonries from its own goods, and that therefore, according to the agreement, they redeemed the Canonries of the Canons by paying seven annuities, or seven times the tax, the Patron replies that, even if the Canonries were not constituted solely from the goods of the Church's endowment, it is permissible to ask the opposing party to demonstrate what they claim, namely, that after the establishment of the Canonries, the Church's endowment paid the same tax as it had before. It seems very strange to the Advocate that, if the facts were as stated, such an obvious argument would not have occurred to the Canons in the year 1742, when, after objections were raised against the list of benefices not redeemed by Bishop Alpheran, the Canons of the second foundation were relieved from the obligation to pay the tax; but not the Canons of the first foundation. The Patron states that all of this has been said at length, and he asserts that it is not based on presumptions and conjectures against the established fact of a long period of peaceful settlement.

[*Latin ed. p. 103*]

GAUDISIEN. It would be permissible to prolong the proceedings for another 103 years, but it is necessary for the opposing party to present the contract of redemption for the aforementioned benefices. Regarding the other part of the doubt, namely, concerning the amount of the tax, the Advocate stated, after what has been said, that he could limit himself to a very small amount. When the collegiate Church of Gozo was erected into a cathedral Church in the year 1864, by Apostolic authority, a tax already existing on unredeemed benefices of the Diocese, called the *Mediadecima*, was attributed to the Episcopal See. Furthermore, at that time, this tax was determined by a Decree, issued in the year 1859 by Bishop Caietano PaceForno, to be in the ratio of three for every one hundred from the annual real revenue of each benefice. However, the Supreme Pontiff has not introduced any innovation regarding the manner and method of payment of this aforementioned tax, but has merely attributed it to the Episcopal See instead of the Seminary. Therefore, the Advocate argues, rather than questioning the burden that weighs upon these benefices, it is more appropriate to increase what is owed to the Episcopal See under the title of this burden. For, they themselves, the opposing party, cannot deny

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that the revenues of these benefices have increased since the year 1859; and yet, no increase in the tax has been imposed.

DEFENSE OF THE CANONICS. The defender of the prior erection of the Canonics noted that a petition had been presented by him: and since the Bishop is striving to uphold the tax primarily through a certain declaration contained in the Apostolic Letters, from which the new Diocese of Gozo was established, therefore he has requested that a doubt be added as to whether there is room for opening one's mouth. Since this request was not accepted, the Advocate continues today, thus he presents the matter. If the Holy Order believes that the Letters of the year 1864 do not in any way impede the attainment of immunity from the *Mediadecima*, they will gladly abandon their claim from the beginning. On the contrary, if the Holy Congregation considers that they do impede it, they request the benefit of disputing another doubt. The Procurator of the canonical treasury then presented a memorandum.

[*Latin ed. p. 104*]

104 GAUDISIEN. [This is] written in Italian, and this is its summary. It recalls that, beginning in the year 1560, a tithe tax had been imposed by the Chapter for the benefit of the College of Malta, which was governed by the Fathers of the Society of Jesus; and that the Chapter had requested the extinction of this burden from the Sacred Roman Rota, which judged that the tax was no longer due. Furthermore, the procurator of the canons states that, if the Fathers of the Society of Jesus had provoked [an appeal], the dispute was settled in the year 1671 through a transaction, with these conditions: The cathedral church was obligated to pay one thousand and thirty Maltese coins; the canons of the collegiate church of Gaudisiensis and other beneficiaries of the diocese were obligated to add one thousand one hundred and seventy-five coins. The Fathers of the Society of Jesus, however, completely relinquished their right to the tithe. If, however, it should happen that someone obligated to pay did not fulfill the transaction, in that case the cathedral would have to pay for him, with the right of reimbursement. This agreement obtained the approval of the Bishop and the Holy See. Therefore, he says, according to the terms of the transaction, the "distinction between redeemed and unredeemed benefices" which the Reverend Bishop of Gaudisiensis presented in his letters to the Sacred Congregation of the Council [S. C. C.] is not to be admitted. For all the benefices which were established at that time, whether through direct payment or through the obligation of the cathedral, were redeemed. Furthermore, the same procurator adds that doubt must yield to truth. And the truth is that the collegiate church of Gaudisiensis paid its portion, to which it remained subject by the transaction. He does not consider it objectionable that the Reverend Bishop presented it to the S. C. C. in this way: "That [the canons], namely those of prior erection, cannot say that the collegiate church, by

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redeeming its own goods, has redeemed their prebends." For the procurator of the canons argues that the collegiate church's extinction of the tithe benefited even the canons of prior erection. 7. According to the procurator of the canons, the reason for this assertion is derived from the very nature of canonical prebends.

[*Latin ed. p. 105*]

GAUDISIEN. 105. Indeed, he says, all benefits were drawn from the goods of the Church, so that the burden of celebrating the Mass might be fulfilled; therefore, they were almost subject to the Church of Gozo, which was obligated to pay for them. But, he continues, what about the mediadecima, which after the transaction was neither paid by the Church of Gozo, nor by the canons themselves? However, this, he believes, has been demonstrated by the Most Reverend Bishop, who wrote to the Sacred Congregation, stating that the payment of the mediadecima did not begin until the day of the decree of Bishop Alpheran, or from the year 1741. He adds that, thirteen years after the erection of the collegiate church, that is, after the separation of the canons, the Church of Gozo paid the mediadecima for more than five coins for every hundred, and therefore should also have paid it for the canons. Furthermore, he presents certain accounts of the revenues of the benefices from the year 1698, from which it is clear, according to the advocate, that all the canons, except for one, were exempt from the payment of the mediadecima. Moreover, even in the year 1758, that is, seventeen years after the decree of Bishop Alpheran concerning the mediadecima, the mediadecima is not found among the burdens of the canons of the earlier foundation. All these proofs, according to the advocate of the canons, should demonstrate the complete exemption from the mediadecima. But, as the crowning proof, he points out that the advocate of the collegiate church of Gozo, in the year 1696, after the transaction, extinguished the mediadecima even for those benefits which were subsequently assigned to the canons. Therefore, since the advocate of the Church of Gozo made the payment immediately after the transaction, this also brought about an exemption for the canons. Having considered these matters concerning the transaction of the year 1671 and its effects, the advocate mentions the decree issued in the year 1741 by Bishop Alpheran. However, he says, this did not intend to introduce anything new, since the Bishop exempted those beneficiaries from the mediadecima, whose taxes had previously been prescribed by Bishop Gargallo, and which had been abolished by a pontifical indult. With these considerations in mind, he does not consider the objection raised by the Most Reverend Bishop of Gozo to be valid, namely, that the decree of the year 1741 notified Bishop

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Alpheran.

[*Latin ed. p. 106*]

106 GOZO. It is stated that the canons of the older foundation were included in the list of those subject to the payment of the tenth. For, it is observed that this list does not include all of the canons of the older foundation. Furthermore, it is presumed that the canons of this foundation opposed this list. However, it is concluded that the canons of the older foundation, even after the decree of Bishop Alpheran, did not at all pay the tenth, and indeed, seventeen years later, as mentioned previously, the tenth is not found among the obligations of the canons. The canon, as procurator, recalls a judgment from the year 1808 against the canons of the more recent foundation, in which the Fathers of the Society of Jesus abandoned the case after the canons demonstrated that their stipends had been taken away from the mother church. Therefore, he argues, the same reasoning must be invoked for the canons of the older foundation. In the year 1859, the canon continues, the current Bishop of Malta, Pace Forno, issued a new decree regarding the tenth on all benefices, except for those which had been exempted by Bishop Alpheran, as demonstrated by the words of the decree itself. However, from the year 1858, the treasury of the canons of the older foundation (their procurator does not know whether through ignorance or error) instituted the payment of the tenth, which continued until the year 1892. Five years later, in the year 1864, His Holiness, Pope Pius IX, elevated the collegiate church of Gozo to the dignity of a cathedral, and, establishing revenues for the episcopal table, added a tax that had long existed on all diocesan benefices, which was called the tenth. However, the canon, as orator, observes, that the Supreme Pontiff did not institute a new tax, but rather applied an existing one; therefore, it must be understood that on all diocesan benefices (the pious were still obligated to pay the tax). Then, the canon, as procurator, addresses the objection that can be raised against the payment that began in the year 1858 and continued until the year 1892. And he states that it is evident that no one...

[*Latin ed. p. 107*]

GAUDISIEN. 107. To burden a benefice with some charge, and to transfer it to a successor, which had previously been free – as explained by Lotter, *De re benefic.*, lib. 1, qu. 32, nn. 10 and 11 – where it is stated: "Therefore, we say that a benefice, once established in freedom, cannot be reduced to servitude... Nor is it permissible to burden it more than it was burdened at its foundation." Furthermore, it is asserted that this holds true especially for those who fulfilled their obligations not out of free will, but out of ignorance. Moreover, the advocate adds that long-term fulfillment of obligations cannot be said to generate a right of prescription. For, when the question concerns obligations that recur annually, such obligations, being

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subject to variations and cessation, do not admit of prescription. And he cites the opinion of the Holy Rota in the decree of November 21, 1845, § ult., paragraph. Mertel. Furthermore, he argues that the very nature of a progressive contract, in which there are as many obligations as there are terms or occasions on which the obligation is renewed, weighs against prescription. Finally, he concludes that the time required for prescription has not elapsed. For, although payments were made for over thirty years, forty years were required against the ecclesiastical body. The witness Ferraris, *voc. praescriptio*, nn. 15 and 34, states: "Real property belonging to other inferior churches and other pious institutions, or pious causes, is subject to prescription after a period of forty years. Actions and obligations against churches and pious institutions are subject to prescription at the same time as their property or goods." In addition, the canon advocate adds another reason for exemption, which he considers conclusive, derived from the nature of the endowments. The cause of the erection of the collegiate church and the fund for the celebration of Masses, which later constituted the canonry, was the lack of priests who would celebrate Mass. However, this erection and the destination of the endowments for divine worship were approved by the Holy Congregation by letters of July 21, 1631. The bishop himself, the canon reminds us, has not neglected to point out that the majority of the canonical goods were used for divine service. Therefore, the inheritance of Maca-

[*Latin ed. p. 108*]

108. The Gaudisii canon, having established the endowment for the seventh canonry, unjustly excluded the Bishop from the legates of Masses, since this also served the service of the Masses with the approval of the Sacred Congregation (regarding the burdens of Masses, November 23, 1737). However, it is well-established legal doctrine, according to the procurator of the canons, that the emoluments and benefits derived from the legates of Masses are in all ways exempt from the tax of the tenth. This is confirmed by the Instruction concerning the Constitution of Benedict XIII in the year 1725, found in Lucidi, *De visit.*, volume 3, page 57, number 9, which states: "By regulation, the pious legates of Masses, which have been left to them, shall not be included in the calculation of the tax, nor shall the alms given to their sacristies." (Barbosa, *ad Conc. Trid.*, Session 23, chapter 18, section 16; Ventriglia, *Praec. benef. par.*, 2, note 23, section 1; *De seminario*, S. C. C., in Caven, November 17, 1629). Finally, the canon argues a third point in support of the exception. The tax of the tenth absolutely requires a condition of necessity. For, "if a house is found to be endowed either in whole or in part with a seminary, then the portion deducted and incorporated from each benefit, as mentioned above, shall be remitted either in whole or in part, as the circumstances require." (S. Conc. Trident., Session 23, chapter 18; *De reform.*). However, the canon argues, neither the dioce-

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san seminary, nor the episcopal table of Gaudisii, which was substituted for the seminary, suffer from this necessity. The seminary, although it is entirely different from the conditions for seminaries established at Trent, has, according to the argument, been endowed with its own goods by the Supreme Pontiff Pius IX, to a greater extent than was necessary. Nor does the episcopal table suffer from this necessity, since it provides conspicuous revenues. Furthermore, the canon's procurator enumerates many revenues, which, according to his opinion, make the tenth superfluous. Finally, the canon's procurator mentions the case of B. Olivaren, from which the tax for the seminary was exempted by this Sacred Congregation on July 14, 1894.

[*Latin ed. p. 109*]

109. GAUDISIAN. It was noted that the tithe, which had been suspended, should be reinstated, due to the concluded agreement and the lack of conditions required by the Holy Council of Trent for diocesan seminaries. Considering these matters, the following question was raised: Whether and in what manner the canons of the prior establishment, located in the cathedral church of Gaudis, are obligated to pay the tithe in this case. RESOLUTION. After discussion by the Holy Congregation, on February 29, 1896, it was decided to respond: Affirmatively in all respects. FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF MAIORCA. CONVENTION AND DECREE. Dated May 8, 1896. SUMMARY OF FACTS. The Bishop of Maiorca, on September 24, 1890, considering that the sanctuary and college of the Blessed Virgin Mary of Lluch, located within the boundaries of the parish of Saint Peter of Esorca, in his diocese, was daily losing that splendor and importance which it once possessed, so that the will of the founders was no longer observed, and considering the numerous difficulties involved in restoring it to its former state, after consultation with learned and pious men, proposed to the Holy Congregation of Bishops and Regular Canons that it be entrusted to a religious family of Discalced Carmelites; so that these would be substituted, not only in the administration of the sanctuary, but also in place of the secular college, which in fact no longer existed. The Carmelites were obligated to fulfill certain duties.

[*Latin ed. p. 110*]

Concerning the foundation of [the institution] in Majorca, and in order to carry out this proposal, the care of souls for the parish of Esorca was entrusted to the Superior. However, since the then-parish priest did not wish to relinquish the parish, a chapel with the Most Holy Sacrament was designated within the church for parochial functions. This proposal from the Bishop received approval from the Holy See through the following rescript dated December 5, 1890: "Provided that the right of the other party is not violated." Following this rescript, the Bishop of Majorca issued a

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decree on April 14, 1891, by which the sanctuary was declared separate from the parish. Feeling that he had been harmed in his pious rights by this decree, William Fiol, parish priest of the Blessed Virgin Mary of Lluch in Esorca, instituted an appeal to the Holy Congregation. In this appeal, the controversy that arose was discussed in general sessions on April 1, 1892, concerning the following question: Whether and how the decree of the Majorcan Curia should be confirmed or revoked. The response was affirmative regarding the first part, and negative regarding the second (1). Once this question was resolved, all difficulties concerning the implementation of the aforementioned proposal, which had also been approved by the Spanish Government, seemed to have been removed and overcome. However, on November 12, 1894, the Bishop of Majorca presented another petition to the Holy Congregation, in which he stated that it was impossible to entrust the aforementioned sanctuary to the religious Carmelites due to the small number of members of that Order in Spain. He requested that the Holy Congregation allow a newly established Diocesan Congregation of the Most Holy Hearts of Jesus and Mary, which had been established in his diocese since 1890, to take its place, and which was already administering the sanctuary with the full satisfaction of the faithful. The Carmelites strongly opposed this petition, as it was harmful to an agreement already made and ratified by both parties, alleging that they were ready to provide not only six, but even twelve religious of their Order, who also spoke the Spanish language, for the care of the sanctuary. (1) This matter was reported in Volume X, page 232.

[*Latin ed. p. 111*]

MAJORCA. The Bishop of Majorca, having stated that the good of the sanctuary, and the will to fulfill the obligations of the founders, and not the intention to favor this or that order, was the motivating cause for obtaining the faculty of entrusting the custody of the sanctuary to the Carmelites, argues that it was free to use the obtained license, and that no pact or agreement existed between himself and the Carmelites, but rather a simple preliminary agreement. He then adds that serious reasons arose which caused him to retract the proposal and to refrain from implementing it: indeed, scarcely had the news been divulged that the custody of the sanctuary was to be entrusted to the Carmelites, when great opposition arose among the people and the diocesan clergy, which even increased through the means of public newspapers. The Bishop examined whether this opposition arose from perverse men, or whether it had any foundation: and it was discovered that this occurred due to the contempt in which the aforementioned Order was held in its diocese, by means of religious men who, having been secularized, afflicted the Order itself with their improper conduct. Therefore, it seemed prudent, having also consulted a Commission created on this matter, to withdraw from the proposal relating to the Carmelites, and

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to entrust the administration of the sanctuary, together with the college, to the priests of the Congregation of the Most Sacred Hearts of Jesus and Mary, which, being a diocesan institution, better corresponded to the purpose of the foundation, and served only those from the diocese. Furthermore, according to the Bishop, another reason existed for excluding the Carmelites; for since the aforementioned foundation and college were established for the priests of the diocese, the Carmelites, being outsiders, could not be called to enjoy its revenues without violating the law; and this even more so after the obtained rescript of December 16, 1890, was strengthened with the clause - provided that the right of another is not violated. In addition to this, there was the difficulty of learning the dialect current on the island of Majorca, the knowledge of which was required.

[*Latin ed. p. 112*]

112. The Majorican [institution] is indispensable for the ministry of preaching and confessions. The autonomous and independent position of the Fathers of the Carmelite Order, as it would be under the rules of the Order, could not be reconciled with the organic structure and the conditions which the Bishop was obliged to impose for the preservation of his jurisdiction in the aforementioned Sanctuary and College; hence, the permanent presence of the Carmelites would prove impossible. Finally, the Bishop observes that, for the present, the inviolability of the Sanctuary's assets is suspended. But if their administration were to pass into the hands of the Carmelites, as has been seen above, this would conflict with the purpose of the foundation, and a certain opportunity would be provided for these assets to be subjected to inviolability, and thus, with the total ruin of the Sanctuary, they would pass into the hands of the treasury. Therefore, the Bishop hopes that his prayers will be favorably received, and that the precarious administration of the Sanctuary by the priests of the Congregation of the Most Sacred Hearts of Jesus and Mary will become definitive, regarding which the consent of the Government has already been obtained. THE BISHOP'S REQUEST APPEARS REPREHENSIBLE. On the contrary, the General Procurator of the Discalced Carmelites maintained that the Bishop's request should be rejected with all his might. Firstly, he observes, not without astonishment, that the reason motivating the Bishop's prayers has substantially changed: for while at first he insisted on the exclusion of the Carmelites from the Sanctuary due to a lack of religious observance on the part of the Order, now, having shed his cloak, he resorts to another, different reason, namely, opposition and hostility from the people and clergy of the diocese, derived from the contempt shown to the religious Carmelites in that region. The General Procurator states that this seems incomprehensible to him, for if this reason truly existed, it should have been brought up by the Bishop earlier, and it is not permissible to admit that he was previously unaware of it. Furthermore,

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noting that the Order is not obliged to answer for the excesses and faults committed by secular religious outside the cloister, since they no longer live under the discipline of the Order, the Procurator refutes the Bishop's current claim, as it is contrary to the agreement initially made between the Carmelites and

[*Latin ed. p. 113*]

MAIORICA. The Bishop himself, to whom both ecclesiastical and civil sanction had been granted, must, without fail, remain in his authority: the Procurator General states that, although there was no written and formal promise, an implicit promise to transfer the administration of the Sanctuary to the Carmelites intervened between the parties; indeed, the efforts made by the Bishop to obtain the relative permission, either from the Holy See or from the Government, clearly demonstrate that he cannot recede from this decision against the will of the Carmelites. These are the reasons presented by both sides for the rejection or acceptance of the petition. In the meantime, for a better understanding of the matter, it is helpful to refer to the controversy, also mentioned in the official report of the Reverend Advocate Summista, in the letters written by the Vicar General of the Bishop of Majorca to the Congregation for Bishops and Regular Canons, dated July 31, 1891, when the aforementioned case in Majorca was being reconsidered. "The Bishop, deeply saddened and greatly distressed that all efforts in this matter would prove fruitless, and believing that the Community of Carmelites could, to the extent permitted by law and without prejudice to the right being sought, provide a temporary remedy for this evil, presented petitions to the Sacred Congregation for Bishops and Regular Canons, in which, after explaining the facts with all their details, he presented the opportune possibility of establishing a Regular Community, while the Parish remained intact. Therefore, the Sacred Congregation for Bishops and Regular Canons approved of these petitions, provided that the right being sought was not harmed. But the Parish Priest, consumed by insane hatred, spared no effort in overturning this arrangement while he was still alive; and it must be noted that he did not succeed. "Indeed, apart from causing distress to the people through false rumors spread by him, he himself, albeit under a false pretense, did not hesitate to resort to impious and suspect publications, repeating, to the point of nausea, insults and calumnies against the Regular Communities and the Bishop of Majorca, who was attempting to establish the Carmelites in the Sanctuary of the Blessed Virgin of Lluch. Thus, the minds of the liberals were so inflamed that it could be reasonably presumed that no injustice would be done to the Religious. And therefore, the proceedings were suspended at that time, as

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recorded in the Acts, Volume XXIX, page CCCXXXVIII, 8."

[*Latin ed. p. 114*]

114 MAJORCA. It has been prudently judged. The parish priest was not, of himself, the author and sole promoter of this most unjust war, being unskilled in letters, but through impious administrators, for a stipulated price; and the Bishop can certainly and without doubt affirm this, and does so with the greatest anguish of spirit. After these considerations, the following question was raised: In what manner, and under what circumstances, is the Bishop of Majorca obligated to surrender the custody and administration of the Sanctuary and College of the B. V. Mary of Lluch, entrusted to the Discalced Carmelite Fathers?

RESOLUTION. The Holy Congregation of Bishops and Regulars, having considered the question presented to it, responded on May 8, 1896, as follows: Affirmative.

REASONS:

I. Agreements must be observed, for nothing is more consonant with human faith than to keep what has been agreed upon. See Law I of the Code of Canon Law, titles I and II, concerning agreements.

II. It is not necessary for agreements to be in writing, for an agreement, whether with or without writing, has the same efficacy. See Law 17 of the Code of Canon Law, concerning agreements.

III. Although a written and formal agreement between the Bishop of Majorca and the Discalced Carmelite Fathers did not actually exist, nevertheless, the aforementioned circumstances clearly demonstrated that the Bishop, on his part, had made a promise, and that the Carmelites had accepted it. Therefore, the Bishop of Majorca could not, without reasonable cause, withdraw from this agreement. Wherefore, the Carmelites justly claimed the custody and administration of the Sanctuary and College of the B. V. Mary of Lluch.

[*Latin ed. p. 115*]

115 ACQS, OR LUÇON. INDEMNIFICATION. Dated May 8, 1896. SUMMARY OF FACTS. The priest, Augustus Cailleton, in religion Father Lawrence, of the diocese of Luçon, received the habit of the Order of Prémontré in the Abbey of Saint Michael of Frigolet, in the diocese of Acqs (Dax), on February 5, 1888. After completing his novitiate, although interrupted for a semester, on March 19, 1889, he pronounced his simple and perpetual vows, a profession which he subsequently renewed, after a period of three years, on May 8, 1892, in accordance with the constitutions of the Order. Barely two and a half years after this second profession, by decree of the Most Reverend Archbishop of Acqs, as Apostolic Visitor of the aforementioned Abbey, dated October 26, 1894, he was dismissed from the Order. Against this decree, Father Lawrence appealed to the Holy

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Congregation [of Religious], requesting that his profession be considered valid, or, if his second profession was considered invalid due to certain omitted formalities, that it be validated retroactively. However, his request was rejected by a rescript dated May 14, 1895 – negatively, in both respects. Frustrated by this, Father Lawrence sought another avenue with the same Congregation, namely, he initiated a claim for damages, in order to be indemnified by the Order for the damages he had suffered due to this dismissal. SYNOPTIC STATEMENT OF FATHER LAWRENCE. Father Lawrence divides his claim into two parts: in the first, he enumerates the damages he has suffered from the Order due to his dismissal; in the second, he argues that the Order is obligated to respond for these damages. Regarding the first point, he states that one of these damages is his poor health and the infirmities he suffers. He claims that this condition has been brought about by his exposure to the cold and humid climate of Jura.

[*Latin ed. p. 116*]

116 AQUÉN. OR LUGIONEN. in Anglia, where he was compelled to reside during his novitiate, which is evidenced both by medical testimony and by a letter written to him by Father Ambrose on August 26, 1888. But to this physical harm, another, no less serious, harm is added, namely, an economic one, as Father Lawrence continues: after having spent seven years in the Religious life, he was dismissed, and now he finds himself among the secular clergy, unable to secure a position or station, due to his advanced age, and for this reason, he cannot even be admitted to the diocesan fund for assistance, and he is deprived of all means of living honestly: a loss which he would certainly have avoided, if he had remained continuously in the Order for seven years. Then, turning to the second part of his argument, the speaker, or Father Lawrence, contends that the cause of these damages is the Order of Prémontré, and therefore, it is the Order's duty to make amends. Indeed, he observes, in the first place, that the infirmities he has contracted originated from his residence in unhealthy places in Anglia, to which he was ordered to go by the Order. His miserable condition in which he now finds himself, and the harm done to him by his dismissal from the Order, are entirely due to the nullity of his first and second professions, and he proves that this nullity of acts is solely and exclusively attributable to the superiors of the Order. In truth: I. The taking of simple vows is considered null, because the year of novitiate was interrupted, first by a request to the Abbey of Etoile, and then to Anglia as chaplain to the Imperatriz. These transfers were made with the consent of his superior general, indeed, at his command, as he demonstrates by the testimonies he has presented, and although some observations were made regarding this interruption. But furthermore, he was admitted to profession by the unanimous vote of the Order, although his absence was known to them, and thus, the interruption of his novitiate also occurred. II. He also argues regarding the nullity of

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his renewed profession, for which he blames the Order. This nullity arose because the renewal of his profession was not issued; according to the prescriptions of the Constitutions, before the...

[*Latin ed. p. 117*]

AQUINAS, OR LUCIONEN. 117. He arrived, but the matter was settled in his absence, by signing a document, which had been given to him by the Superiors of the Order. When he himself perceived this irregularity, he notified the Order about it, but the Superiors of the Order replied that the signed declaration was sufficient in itself. Therefore, from what has been stated, it is clear that the nullity of the first and second professions is solely attributable to the Order; consequently, according to Father Lawrence, the damages resulting from the dismissal under the aforementioned title must also be compensated by the Order.

RIGHTS OF THE ORDER. Otherwise, the General Procurator of this Order feels differently, and he rejects all the arguments presented by Father Lawrence with all his might. Indeed, regarding the alleged damages arising from the contracted infirmity, he notes that the aforementioned infirmity, which, according to medical testimony, was said to have been contracted on February 20, 1895, due to cold and humid air, should be entirely considered as a consequence of Father Lawrence's previous journey to England, since he resided in that region during the summer months, namely from May to September, and in a very healthy monastery. But furthermore, the General Procurator denies this infirmity, because from his return until the day of his dismissal, Father Lawrence continuously worked in the sacred ministry, giving exercises, missions, and did not make any complaint about the aforementioned infirmity, indeed, he retained the substantial profits he received. Finally, he denies that Father Lawrence went to England at the order of the Superiors of the Order: this was a matter of his own free will, and he himself considered it better to go to that place. As for the other point, namely the economic damages, given that they truly exist, the General replies that they are imputable to Father Lawrence. Since he was dismissed from the Order, and the Superiors opposed the healing of the root cause of the profession that he had emitted, not because of the infirmity he had contracted, nor because of any irregularities in the profession, but solely because of his perverse conduct, and because he had completely become refractory to the commands of his legitimate Superiors. With these things stated on both sides, it was necessary to explain the following.

[*Latin ed. p. 118*]

118. QUESTION. OR, LUCIONEN. Is it doubtful whether a place can be assigned for the purpose of providing for damages in a case? RESOLUTION. The Holy Congregation of Bishops and Regulars, after deliberation on May 8, 1896, judged that the answer should be: No, in all cases. NO-

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VARA. EXECUTION. May 8, 1896. SUMMARY OF THE CASE. The former religious priest, Matthew Fazio, having been nominated by the patrons for the presentation to the parish of Saint Victor in the Island of Superior Verbano Lake, and having been instituted to it by the Episcopal Curia of Novara on March 20, 1888, after having administered that church for six years, renounced the aforementioned parish by a decree of the aforementioned Curia dated December 10, 1894, thereby deciding to withdraw from the administration of that parish, and rendering it vacant. An appeal having been lodged against this decree to the Congregation of Sacred Causes and Regular Canons in the general assembly on August 23, 1895, the decree was confirmed, but with a certain condition. — The Bishop should not proceed to accept the priest's resignation unless he has first provided for him in a suitable manner (1). However, less than two months having elapsed since the date of the decision, the former parish priest Fazio complained to the Holy Congregation that he had not yet been provided for in a suitable manner by the Bishop of Novara. The Bishop, in his responses to the Holy Congregation dated November 26, 1895, stated that the complaints of the former parish priest Fazio were without any foundation. Furthermore, the priest Fazio has, from the beginning of the aforementioned year, been serving as a chaplain in the village of Cascine Barbavara, in the parish of Graveilona Lomellina, for which he receives a substantial annual sum (1).

(1) See Vol. XXVIII, 419.

[*Latin ed. p. 119*]

NOVARIEN. 119; stipend, 450 livres, excluding the free application of offerings and uncertain revenues. To execute the aforementioned sentence, the Bishop, in order to fill the position of the priest Fazio, offered him an ecclesiastical benefice worth 240 livres per year. Indeed, the Bishop continues, if this position were conferred upon the priest Fazio, it would appear to be more lucrative, since, as a parish priest, he would have only 390 livres of public revenue, recently reduced due to a new tax assessment, and 250 livres from the local municipality, burdened with the expenses of Mass and with almost no uncertain revenues. The priest Fazio desired to have a parish; but this cannot be granted to him, the Bishop said, because experience teaches that he has not performed well in the pastoral office. Having stated these things, concerning the matter at hand: Is the provision proposed by the Bishop appropriate in this case? RESOLUTION. After discussion by the Sacred Congregation of the Eastern Churches on May 8, 1896, it responded: "Affirmatively."

FROM THE SACRED CONGREGATION FOR RITES.

ORIOLEN. Concerning the beatification and canonization of the Venerable Servant of God, professed nun of the Order of Hermits, Sister Joanna

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Guillen of Saint Augustine, in the monastery of Saint Sebastian, in the city of Oriolen. The ordinary process, completed in the city of Oriolen in the year 1616, concerning the fame of the sanctity of life, virtues, and miracles of the Servant of God Joanna Guillen, has, by the provident wisdom of God, been brought forth from the darkness in these latter times. This was brought to Rome and presented to the Sacred Congregation for Rites, together with the acts of a new investigation, adorned there in the year 1888, so that this Handmaid of God may be a glory to Cattolica Hispaniae and to the Augustinian Order.

[*Latin ed. p. 120*]

120 FROM the Sacred Council of Trent, a brilliant light shone forth. Anne, of Spanish origin, born in the town of Corbetta, to parents named Honorato and Anne Remires de Espejo, who were distinguished for their wealth and virtue, was born on the fifth day before the Kalends of January, in the year 1575. She was cleansed with the sacred waters of baptism in the parish church of St. James. Even as a child, she was drawn to the image of Jesus, suffering and wounded, and she would lovingly kiss His image on her chest and forehead. From her youth, the young girl, leading a solitary life, shone with a religious spirit. Admitted to the Synaxis and frequently attending, she soon, with the approval of her confessor, dedicated her virginity to God, behaving with such piety and virtue that mothers urged their daughters to emulate Anne. After enduring a five-year struggle, vigorously opposed by her family, especially her mother, she entered the Augustinian monastery of St. Sebastian, in the city of Cattolica, on May 15, 1597, at the advice of the Bishop of Oriola. There, after receiving the habit of religion and completing her year of novitiate, she pronounced her solemn vows. She diligently cultivated the perfection of religious life and the observance of the rules, walking before God with the other nuns. Not only the young nuns, but even the older nuns subjected themselves to her discipline, so that this mystical vine might bear abundant fruit. Finally, when she was just over thirty years of age, Anne, patiently enduring pains and infirmities, in the very monastery of St. Sebastian, where her mother had served God in good works, peacefully exchanged this mortal life for eternal bliss on June 2, 1607, the day she had foretold. The citizens of Oriola gathered for her funeral, and, as is remembered, God showed in many and wondrous ways that He had received the soul of His handmaid Anne, and her remains were laid to rest in the monastery of St. Sebastian, with great veneration and frequent visits from the people. Consequently, a few years later, at the request of the entire city of Oriola, the aforementioned Ordinary Process was initiated, which had recently become known. To this was added a more recent investigation, so that the fame of the sanctity of this Servant of God has persisted and grown to this day. This double Ordinary Process was presented to the Congregation of Sacred Rites, and Our Most Holy Pope Leo

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XIII graciously granted permission for the introduction of a Commission to investigate the matter.

[*Latin ed. p. 121*]

From the Sacred Congregation, it is possible for the cause of this Servant of God to be conducted in the Ordinary Assemblies of the Sacred Congregation itself, without the intervention and vote of the Consultors. Therefore, at the urgent request of the Most Reverend Father Sebastian Martinelli, Prior and General Postulator of the Order of Hermits of Saint Augustine, and considering the diligent petitions from the Most Reverend Archbishops of Caesaraugusta and Firman, as well as from numerous other sacred prelates and other men of ecclesiastical standing, I, the undersigned Cardinal, Prefect of the Sacred Congregation of Rites and Relator of this cause, in the Ordinary Assembly of the aforementioned Sacred Congregation, held on the date indicated at the Vatican, proposed the following question for discussion: "Should a Commission for the Introduction of the Cause be appointed in this case and for the purpose in question?" And the Sacred Congregation itself, after mature deliberation on all matters, and having heard the opinion of the Reverend Father Gustavo Persiani, who holds the office of Promoter of the Holy Faith, decided to respond: "Affirmatively, that is to say, a Commission should be appointed, if it pleases the Most Holy Lord." On May 19, 1896. Having related all of this to the Most Holy Lord, our Pope Leo XIII, through myself, the undersigned Cardinal, His Holiness, having approved the Decree of the Sacred Congregation, deigned to sign with his own hand the Commission for the Introduction of the Cause of the Venerable Servant of God, Joanna Guillen, mentioned above, on June 2 of the same year.

C. CARD. ALOISI-MASELLA, Prefect of the Sacred Roman Congregation.

L. S. ALOISIUS TRIPEPI, Secretary.

OF THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD, VIRGIN, KNOWN AS THE MAID OF ORLEANS, JOANNA DE ARC.

At the urgent request of the Most Reverend Father Francis Xavier Hertzog, of the Congregation of Saint Sulpice, Postulator of the Cause of Beatification and Canonization of the Venerable Servant of God, Joanna de Arc, the Most Reverend and Eminent Cardinal Lucidus Maria Parocchi, Archbishop of Albano, and Promoter of the same Cause, in the Ordinary Assembly of the Congregation of Rites, held on the date indicated at the Vatican, in accordance with the special dispositions of the Most Holy Lord, our Pope LEO XIII, issued in the years 1878 and 1895, the following ques-

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tion was proposed for discussion:

[*Latin ed. p. 122*]

122 E X S. C. RITUUM proposed the following question: "Whether the sentences issued by the Most Reverend Bishop of Orleans and by the judge delegated by the Most Reverend Bishop of Saint-Dié, concerning the cult of the Venerable Servant of God, Joan of Arc, or concerning the conformity of these sentences with the Decrees of His Holiness Urban VIII, should be confirmed in the case and to the effect of which we are speaking?" – Furthermore, the aforementioned Sacred Congregation, after careful examination of all matters, and after hearing the voice and written testimony of the Reverend Father Gustavo Persiani, who was performing the duties of Promoter of the Holy Faith, decided to respond: "That the sentences are in conformity with the Decrees of His Holiness Urban VIII, in the case and to the intent of the matter." On the 5th of May, 1896. Having related all of the above to His Most Holy Lord, Pope Leo XIII, through me, the undersigned Secretary, His Holiness approved and confirmed the judgment of the Sacred Congregation, on the 7th of the same month and year. C. L. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation. S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation. CONCERNING the Beatification and Canonization of the Venerable Servant of God, Anthony Mary Gianelli, Bishop of Bobbio, Founder of the Congregation of Religious Sisters, the Daughters of Mary, from the Garden. Anthony Mary Gianelli, born of a noble family, on the 12th of April, 1789, in the humble town of Cerreto, in the Diocese of Genoa, was washed with the waters of the sacred font, and, as if an angel, was called Angel. As he grew older, he distinguished himself by the sweetness of his character, his habit of obedience, and the innocence of his life. Urged on by the parish priest, and by his own teacher, he was drawn to studies, and so progressed in letters that he deserved to be called the foremost student of the school. With the aid and expenses of a pious woman, Rebizzo, he went to Genoa, where he cultivated his talents, both in a private home and among the students of the Seminary, and he showed himself particularly suited to the sacred exercises, giving them to the people, whether in the streets or in the temples, even as a young man. Having been initiated into the ecclesiastical Orders, and on the 3rd of March, in the year 1812, he was raised to the priesthood, and he was held in such high esteem that His Eminence Spina, the Archbishop of Genoa, appointed him a canon in the cathedral church and rector of the diocesan seminary, and subsequently Prefect of Studies and Discipline. At the command of the same Archbishop, he received the clerical habit, and was appointed Archpriest of Saint John the Baptist.

[*Latin ed. p. 123*]

He established a seminary for poor students, endowed with funds

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collected by the Curial officials. There, in the year 1829, he founded the religious Congregation of Saint Mary of the Garden, which today flourishes throughout Europe and South America, dedicated to the education of young girls and the service of the sick, and clearly benefits the people. In the year 1838, he was appointed Bishop of Bobbio and consecrated on May 6th, and, renowned for his intellect and virtue, he undertook the governance of the diocese. Reflecting the image of a good and supreme Shepherd, he vigilantly guarded his flock through a multitude of works of charity, led them to the most wholesome pastures, and, together with his companions from the Society of Evangelical Priests, displayed his zeal both within and outside the diocese in sacred endeavors. Finally, in the year 1846, he was unexpectedly struck by a stroke in Piacenza, to which he had gone for health reasons at the direction of his physician. Strengthened by the Sacraments of the Church, he died on June 8th, on the Feast of the Most Holy Trinity, while receiving the Kiss of the Lord. His body remained in Piacenza for only one day; then it was carried to Bobbio, with a great multitude of clergy and people attending the funeral and burial, and was placed in the repository of the Bishops of Bobbio, near the Cathedral Church. Meanwhile, the fame of holiness, which the Servant of God had already acquired while still living, so increased after his death that Ordinary Processes were held in the Curias of Bobbio, Piacenza, and Genoa, concerning the same fame of holiness of life, virtues, and miracles. These were duly carried out and presented to the Sacred Congregation of Rites, and the Most Holy Pope Leo XIII, through Decrees issued on June 9, 1893, and March 10, 1894, graciously granted that a Question regarding the appointment of a Commission for the Introduction of the Cause of the aforementioned Servant of God could be discussed in the Ordinary Session of the aforementioned Sacred Congregation, without the intervention and vote of the Consultors, even if the period established by the general rule had not yet elapsed. Therefore, at the urging of the Most Reverend Lord Augustine Dondero, the Postulator of this Cause, and in the name of the Most Reverend Archbishop of Genoa and the Most Reverend Bishops of Bobbio and Piacenza, and with attentive letters from numerous Sacred Prelates, Chapters, and Priests, distinguished by their dignity and piety, as well as from the daughters of the religious Congregation of Saint Mary of the Garden, the Most Eminent and Reverend Cardinal Lucido Maria Parocchi, Bishop of Alba, and the Relator of the Cause in the Ordinary Sessions of the Sacred Congregation of Rites, signed the following Question at a meeting held in the Vatican.

[*Latin ed. p. 124*]

124. From the Sacred Congregation of Rites, a proposal was put forward, namely: "Should a Commission for the Introduction of the Cause be designated in this case, and to what effect?" And the aforementioned Sacred

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Congregation, after mature deliberation and having heard the Reverend Father Gustavo Persiani, who held the office of Promoter of the Holy Office, decided to respond: "Affirmatively, that is to say, the Commission should be designated, if it pleases the Most Holy Lord; provided that, as is necessary, the acts instituted in Bobbio are first rectified." On May 19, 1896. Subsequently, I, the undersigned Cardinal, Prefect of the Sacred Congregation of Rites, reported to Our Most Holy Father Leo XIII regarding these matters. His Holiness approved the judgment of the aforementioned Sacred Congregation, ordering the rectification of the acts pertaining to the process in Bobbio, and deigned to sign the Commission for the Introduction of the Cause of the aforementioned venerable Servant of God, Anthony Mary Gianelli, Bishop of Bobbio, on June 21 of the same year.

C. CARD. ALOISI-MASELLA

S. B. C.
Prefect.
L. %

S. ALOISIUS TRIPEPI

S. R. C.
Secretary.

FROM THE SACRED CONGREGATION OF THE INDEX.

Friday, August 21, 1896.

The Sacred Congregation of Eminent and Reverend Cardinals of the Holy Roman Church, appointed by Our Most Holy Father Leo XIII and the Holy Apostolic See to oversee the Index of books of pernicious doctrine, and their condemnation, proscription, expurgation, and permission throughout the Christian Republic, having met in the Vatican Apostolic Palace on August 21, 1896, condemned and condemns, proscribes and proscribes, or orders to be condemned and proscribed, and mandates that the following works be placed on the Index of Prohibited Books:

J. MICHELET, LEPRÊTRE - LES JÉSUITES. — Édition définitive, revue et corrigée. - Paris. Ernest Flammarion, éditeur.

[*Latin ed. p. 125*]

FROM THE MOST HOLY INDEX: JULES BOIS, *SATANISM AND MAGIC* — Paris, Léon Chailley, publisher, 1896; *MYTHS, CULTS, AND RELIGION* by A. LANG, translated by Léon Marillier, professor at the École des Hautes Études, with the collaboration of A. Dirr, student at the École des Hautes Études, preceded by an Introduction by Léon

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Marillier. — Paris, Ancienne Librairie Germer BailMère et C. Felix Alean, publisher; 108, boulevard Saint Germain, 1896: volume in 8° format, 683 pages. EMILE ZOLA. — Rome. Complete edition in one volume. — Paris, 1896. G. Charpentier and E. Fasquelle, publishers. AUTHOR OF THE WORK: *The Jesuits from Within; or, A Glimpse into the Society of Jesus* — Prohibited by Decree of April 17, 1896. It has commendably submitted itself and the work has been condemned. Therefore, no one of any rank or condition whatsoever, may dare to publish, or after publication, to read or retain the aforementioned works, in any place or language, but must deliver them to the Ordinary of the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been related to ME, the undersigned S. L. C. from the Secret Archives, HIS HOLINESS, POPE LEO XIII, approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome on August 22, 1896. f SERAPHINUS CARD. VANNUTELLI, BISHOP OF TUSCULUM, PREFECT. Fr. MARCOLINUS CICOGNANI, PROVINCIAL GENERAL, O.P., from the Secret Archives. In the place of the Seal. August 24, 1896. I, the undersigned, Magister Cursorum, testify that the aforementioned Decree has been affixed and published in the City. Vincent Benaglia, Magister Cursorum.

[*Latin ed. p. 126*]

426 APPENDIX L EXHIBITING ACTS OF THE APOSTOLIC SEE; WHICH EITHER HAVE BEEN OR ARE NOW BEING EXAMINED BY THE MODERATOR OF THE EPHEMERIDES. S. C. S. Office, December 9, 1784 — Apostolic Vicariate of Fokien. Doubts regarding a contract of sale and purchase. It is a practice very commonly used in this Empire, whereby lenders, for the security of the loan and interest, obligate the borrowers to assign and determine some property, estate, or field, with the agreement that, if the interest is not paid when it becomes due, along with the principal loaned, a contract of sale and purchase shall be celebrated for the just price of the field or estate (or the borrowers themselves, in order to more easily obtain some property, determine it with the aforementioned agreement), and, in fact, upon verified non-payment of the interest, which, when added to the principal loaned, equals the just price of the property, a deed of sale and purchase is drawn up, calculating the principal loaned and the unpaid interest as the just price of the field or estate, and in this way the lender obtains possession of the field or estate. This contract does not seem to be disapproved of in this Empire, provided that the mandarins, in their tribunals, in a dispute concerning the payment of the profit from the loan, decide that the interest is to be paid, not exceeding the principal; and if it does exceed, they determine that nothing more is to be paid than double the principal. Therefore, it appears that if double the principal equals the just price of the field or estate, such contracts are considered

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valid and lawful by the mandarins; and by all the Chinese, and therefore, all those who have acquired some estate or field in this way remain in peaceful possession, and no one dares to bring a lawsuit against the possessors through a contract celebrated in the aforementioned manner. It is certainly an error and ignorance of natural law to consider such a contract lawful, but it is doubtful whether it is valid, so that through such a contract ownership of the property transferred is acquired, or not. On one hand, it seems that it is not, because in the case of usury, ownership is not transferred, if that which is extorted through usury is a thing, the use of which is not consumption, as holds D. Thomas. But on the other hand, since in the present case the entire field or estate is not acquired through usury, if...

[*Latin ed. p. 127*]

APPENDIX I. 127. The entire price is not usury, for within the price also enters the principal sum lent, which may well be the greater part of the price; it seems that, although such a purchase and sale is unjust, it will nevertheless be valid, provided that its injustice does not exceed half of the just price. Therefore, I ask, whether, on account of this reason and on account of the laws of this Empire, in which mandarins approve such a contract, such a purchase and sale is valid, so that the usurer acquires ownership of such a piece of land or field? And so that, although he is bound to return the usury, he is not nevertheless obliged to return the fruits obtained from the land or field, as if they were obtained from his own land, over which he has dominion? – The decision regarding this second question depends on the resolution of the first question, namely, whether if someone subsequently buys such a field or piece of land from such an usurer, paying a just price, that buyer acquires legitimate ownership. For if the first contract of purchase and sale, as I have said, is considered valid by the mandarins, how much more will this second one be considered valid? If these second buyers do not acquire ownership, many will remain defrauded without any defense of their indemnity; for no recourse remains to them to recover the price paid. For if they appeal to the office of the Judge, it will be in vain, for they will lose the case before the mandarins. What, therefore, is to be said about these second purchases? Should they be compelled to return the usury and the fruits from the land and field purchased at a just price? Therefore, it is asked: I. How should the missionary act if someone, an unbeliever having fields or lands acquired in this manner through usury, requests Baptism; or if a believer requests Confession: should he be obligated to compel them not only to make restitution of the usury, but also of the fruits received, so that they may be admitted to Baptism or Confession? II. How should the missionary act with unbelievers requesting Baptism, or believers requesting Confession, who have purchased fields or lands in this manner from usurers: should they be compelled to make restitution

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concerning those goods sold by the usurers, so that they may return them with the fruits received, and should they be obligated to make restitution under the denial of Baptism or Confession?

R. It must be answered according to the Instruction to be drawn up by Our Holy See, the tenor of which is as follows: Regarding the first question. A contract of loan with a convention of usury and an assignment of land as security for the principal and interest, with the added agreement that, if the usury is not paid, and if the sum of the usury added to the principal sum reaches the just value of the land, the borrower shall be obliged to sell it to the lender, according to what is proposed, and insofar as no legitimate title intervenes to demand anything beyond the principal, it is usurious, and to him.

[*Latin ed. p. 128*]

128 APPENDIX I. having been cited, and therefore, whenever the sale and delivery of the property have not followed, the lender can only demand the return of the principal, deducting the interest charged thereon. However, if the sale and delivery of the property have followed, and if the property remains with the borrower, the lender must return the property itself and all fruits derived from it, even if consumed, saving only for expenses and industrial profits, and saving the retention or repetition of the sum lent. If the property has been alienated from the borrower and cannot be conveniently recovered, the borrower must return the price of the property, and in both cases, the restitution must be made to those to whom it legally belongs; but if these persons are not present, the Church, as the owner of the property and money, must convert it to pious uses: declaring that if the lender entered into such a contract at a time when, blinded by infidelity, he was ignorant, and if the persons to whom restitution is due are not present, then whatever the lender ought to return is left with him, as for pious use, as decreed by Paul III in his Constitution *Cupientes*, issued on March 21, 1542, and confirmed by the Most Holy Clement XI in his Constitution *Propagandae*, issued on March 21, 1704.

Regarding the second doubt. Second, purchasers, whenever they have acquired the property in good faith and by a just title of purchase, or have possessed it for as long as the law requires to establish prescription, are not obliged to return the property and its fruits, even though, after legally completing the prescription, they learn that the property could not have been lawfully sold by the lender: for it is sufficient that he who prescribes has no knowledge of the alien's claim at any time, as stated by Lucius III in chapter *Quoniam*, 20, on prescriptions. However, if they purchase in bad faith, or, during the time of prescription, they know that the property could not have been sold by the lender, they are obliged to return the property and its fruits from the day of bad faith, even if consumed, saving for expenses and purely industrial profits, but in such a case, if the property

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was acquired before Baptism and the persons to whom restitution is due are unknown, the property to be returned remains with them, as for pious use, according to the form of the aforementioned Apostolic Constitutions.

According to the foregoing, those who are missionaries residing in the Sinai region should conduct themselves with due diligence and prudence, so that, as far as possible, those who are lenders and possessors in bad faith, having been warned of their respective obligations, are not allowed to unjustly refuse to fulfill them if they are able, and if they are infidels, they should not be admitted to Baptism; if they are faithful, they should not be admitted to the other Sacraments.

[*Latin ed. p. 129*]

APPENDIX 129 I. Sacred Congregation of the Holy Office, May 9, 1821. — Kentucky. — Doubts concerning usury. 1. Is usury always contrary to both natural law and divine law? 2. How should a confessor act who, considering certain usuries to be forbidden, receives an order from the Bishop not to mention this matter publicly? R. To the first question: Affirmative. To the second: Regarding the doctrine of the Church, it cannot be passed over in silence that from a loan, no usury whatsoever can be received. Regarding particular cases in which it is asserted that a legitimate profit is derived, either from a title different from a loan, or by virtue of a contract of another nature, it is possible and ought to be done to obey the Bishop. Instruction from the Sacred Congregation of the Holy Office, February 4, 1827. — Doubts concerning usury. In the General Congregation... before His Holiness Pope Leo XII, the following doubts were presented on July 20, 1826, transmitted to the Sacred Congregation of the Propagation of the Faith by the Reverend Father Paschal of Sorrento, Vice-Prefect of the Holy Land in Memphis, and these doubts are as follows: 1. What opinion should one follow and adopt with those who lend their money at interest, demanding 12, 18, and even 24 annual scudi for Cento, with or without equivalent security, which they consider to be quite pious? His Holiness, after hearing the opinions of the Cardinals Emmerich and Rommel, General Inquisitors, ordered that an answer be given to both doubts as follows: Regarding the second doubt, His Holiness has determined that it is usurious to receive something above the principal in a loan, not accompanied by any of those titles that would make such a profit just, that is, a loss of profit, or a damage incurred, or an external risk (and not an internal risk arising from the nature of the transaction) of losing the principal. Based on these principles, His Holiness decreed that the decrees issued by the Holy See on this matter should be observed as the rule to be followed, such as that concerning the Kingdom of China, where it was always and indiscriminately permitted to demand something above the principal in a loan, because they always and everywhere recognized an external risk to the principal. This practice is considered imprudent and illicit, and such a practice is only permitted

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when...

[*Latin ed. p. 130*]

150 APPENDIX I. The assessment is made when a real danger intervenes, and the compensation corresponds to the quality of the danger. But if the danger does not actually intervene, but is merely probable, it is determined that those who receive something in this way should not be disturbed, provided that account is taken of the quality and probability of the danger, and that the proportion between the danger and what is received is maintained. Moreover, His Holiness has ordered that the Encyclical of Benedict XIV, which begins: "Vix pervenit," should be kept in mind, as it declares that it is illicit and usurious to receive something in a loan beyond the principal, precisely by reason of the loan, and without any of the legitimate titles mentioned above, even if what is received is not excessive, but moderate and small; even if the one from whom this profit is demanded is not poor, but rich; even if the one who receives it will not leave the sum lent to him idle, but will use it to increase his fortune. Therefore, whoever wishes to consult his conscience, must first diligently inquire whether a just title other than a loan does not truly occur, or whether a contract made from the loan itself does not truly occur, by means of which the benefit sought is rendered completely free from fault and immune: all of which has been more fully explained by the same Pontiff in his work on the Diocesan Synod, in the edition of book 1, chapters 4, 5, 6, 7, and 8. Furthermore, since the same Pontiff ordered that an instruction be sent to the Prefect of the Missions in Mahdia on April 17, 1749, which is relevant to the matter, the same is appended here; in which he advises that it is more fitting, for the security of the Christians of that place, to urge them to abstain from such contracts... Finally, a response dated September 27, 1808, given by order of Pope Pius VII, is appended, addressed to the General Vicars of Poitiers. Instruction sent by order of Benedict XIV to Father Carlo Felice Cappuccino, a Capuchin missionary in Mahdia, and addressed by order of Pius VII to the General Vicars of Poitiers. In a Congregation of the Holy Office held in the Apostolic Palace before His Lordship on April 10, 1749, having been reported the question of Your Paternity regarding the money that these Christian slaves usually give to Jewish merchants at interest, His Holiness was pleased to order that, in the proposed case and in similar cases, Your Paternity should regulate matters according to the circular letter of the same Holiness sent to the Bishops of Italy on November 1, 1745, which begins "Vix pervenit," from which letter you will understand that contracts in which the fruit of money given to another is received are not lawful, when they do not have their denomination either of a Censum or of a true Cambio, either by letters,

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or...

[*Latin ed. p. 131*]

APPENDIX I. 151, whether they are of a real partnership, or whether the compensatory titles of lost profit and resulting damage do not intervene in them, for reasons by which one may receive such fruit beyond the interest on the money given, as is sufficient to compensate the creditor for the damage he suffers, or to compensate for the profit he loses, and that where these denominations, or the aforementioned compensatory titles, are lacking, and that for this reason they cannot be resolved into any contract other than a loan, it is in no way permissible to receive, or demand, fruit from the money given to another, beyond the principal and interest, even if the fruit is moderate, or if it is demanded not from the poor but from the rich. From these rules prescribed by the aforementioned circular letter of His Lordship, Your Eminence may take guidance regarding the contracts made by these Christian slaves with Jewish merchants, so as not to allow them absolutely, when the aforementioned conditions do not intervene in them. And since, between the one who gives the money and the merchant who receives it, in order to assure the lender or capitalist of the return of the interest and principal, and to agree with him on a certain profit in addition to the interest given, there cannot be a true partnership, therefore, any profit or fruit demanded from the capitalist beyond the interest is unjust and illicit, even if he does not intend to give said money in the nature of a loan; and only in the case that the aforementioned compensatory titles were to intervene, could the capitalist demand from the capitalist, in addition to the interest, that fruit which would suffice either to compensate for the damage he receives, or the profit he loses. And although, because of a danger not arising from the nature of the transaction, but from another external incident, to which danger the lender exposes the principal, the merchant who receives it may demand from him a profit proportionate to said danger, in addition to the principal itself, nevertheless, since in practice it is a very difficult thing to measure the estimate of this danger, and it is a very dangerous thing to demand the fruit in proportion to it, it is considered more conducive to the security of the conscience of these poor Christian slaves, that Your Eminence exhort them to abstain from such contracts, warning them of the danger in which they incur, and persuading them to employ their money in other contracts, certainly lawful, and which have their own denomination, such as buying and selling, or a true partnership, through which, with the addition of their industry to the money, they may obtain an honest profit from the same money. Response of His Eminence, the Most Reverend Cardinal Pacca, on behalf of His Holiness Pope Pius VII, to the General Vicars of the diocese of Poitiers, [1808]. My Lords. A letter from them of August 14th has reached the Holy Father. As

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for the doubts they proposed in the same letter...

[*Latin ed. p. 132*]

152 APPENDIX I. The Holy See charges me to suggest that you consult the Encyclical of the Most Holy Pope Benedict XIV of November 1, 1745, which begins with the words "Vix pervenit," and also the work of the praised Pope, "De Synodo dioecesana," Book 7, Chapter 47, Roman edition of Pagliarini of the year 1748, in which places you will find the foundation for deciding with certainty any case of the nature of those presented to you. Furthermore, so that, in addition to the doctrinal content contained in the aforementioned documents, which are printed and available everywhere, you may have some more precise rule, especially concerning the danger of usury, whether it is or is not a just title to some profit in a loan, the same Holy See has ordered that a copy of an instruction be provided to you, which, by order of the aforementioned Pope Benedict XIV, was sent to a missionary in Africa, after a long consultation held before the Pope himself, two years after the issuance of the aforementioned Encyclical. In faithfully executing the orders of the Holy Father, I am pleased to be able to satisfy, in this regard, your desires, which surely arise from your commitment to point out to the faithful of this diocese the sure rule for not erring in such a delicate matter. Sacred Congregation. Office of [Date], November 29, 1854. — Vicariate Apostolic of Cambodia. Doubts regarding usury among the faithful residing in Cambodia. In these regions, for a long time, missionaries have greatly striven to remove all traces of usury from the Christians entrusted to them, especially in the case of which we are speaking below. The faithful, influenced by the customs and habits of the infidels, daily lend a sum of money, for example, 100 ligatures, or one silver coin, to the poor, who are burdened with debts, and they retain the person of the debtor, or his wife, or his children, as a pledge for the debt (which is often secured by a third party), as servants or slaves in their homes. In this case, nothing more than the stipulated sum is received, because the labor of the servant is considered as payment for the usury. Moreover, even if the debtor himself, or someone else acting on his behalf, has served for 10 or 20 years, or even longer, he is nevertheless obliged to pay the full sum in order to obtain his freedom. Indeed, the sum itself is often increased, because if he has broken or squandered anything in the service of his master during the time of his servitude, whether culpably or innocently, it is imputed to him and added to the sum. Sometimes it has even happened that the sum is very small, for example, 30 or 40 ligatures, and in this case, the creditor also claims the entire person of the servant or debtor, the sum being far from sufficient.

[*Latin ed. p. 133*]

APPENDIX I. 135 items. Therefore, the question arises whether this method of conducting business is usurious, and whether, as such, it should

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be condemned, under penalty of restitution and denial of absolution? In order that the Sacred Congregation may fully understand the matter and confidently pronounce its judgment, it is helpful to explain certain points more fully, for a clearer understanding of the question.

1. It must be noted that the civil law in Cambodia does not precisely define usury in the case of loans; therefore, the reins are loosened for the avarice of the wealthy. According to custom, those who treat their debtors more humanely demand usury of 60 for 100 per year; many others demand 100 or 200, and often 300 or more for 100; but there is no legal rate, and the king himself, when questioned by me, replied that any agreed-upon usury, however enormous, must always be paid; and indeed, the courts follow this rule.

2. Among those who are reduced to servitude because of debts, some are advanced in years, such as the elderly and the infirm, whose labor can scarcely cover the expenses of their food or clothing. The same must be said of younger people, from the age of 10 to 15 or 16 years: this does not apply to those servants who, through light labor, can acquire no right to reduce their debt; it applies only to those who are of adult age. Furthermore, these can be divided into two classes. Some live outside, or near, the master's house, and receive nothing from him for their sustenance, except on the days when they perform work for him. But most live under the same roof with the master, and are always in his service. Indeed, under whatever regime the servants are established, if they have children during their servitude, the master considers them as his servants and treats them as such, and if they are granted freedom, this is not done without a price in silver, even though they have become older and have worked sufficiently to cover the expenses of their children. (According to the provisions of the civil law, the master can demand 80 ligatures from each of his servant children born into servitude, when they wish to obtain freedom.) — From the foregoing, it is clear that the servants in Cambodia have the ability to redeem themselves by repaying the price of their purchase to the master; nevertheless, many masters sell them for as much as they can get, just like animals and oxen.

3. The ordinary labor of the servants is not the same in every house, but differs according to the varying condition or industry of the master, and also according to the sex and strength of the servants. If they are women, their ordinary occupations are to cook food, fetch water from the river, pound rice, care for children, buy and sell in the market, spin cotton, weave, and make cloth. If they are men, in addition to the tasks mentioned above, it is their duty to collect and chop wood, fish, cut grass, and gather reeds in the forests.

[*Latin ed. p. 134*]

134 APPENDIX I. To build a house, one must cut timber, harvest straw and weave it to cover the roofs of the house, transport goods in baskets,

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and bring in grain. If the master is a farmer, every slave, whether male or female, contributes to the cultivation of the fields, the planting of crops, and the harvesting, transporting, and threshing of them. Indeed, there are masters who, lacking labor in their own homes, hire out their slaves to others and demand a payment for it, or force them to carry baskets along rivers and streams to conduct business for them; this labor, like the cultivation of fields, is very arduous. 4. To clarify the present question, it is most important to indicate what wages are paid to hired servants in this kingdom; from this, it would be clear how much creditors receive from the labor of their slaves above the sums of money lent to them. But this rule is lacking, since no hired servant is found in Cambodia. He who wishes to have a servant pays the debt of some person, or gives a certain sum as a loan and receives a slave, whose labor, or service, is accounted as interest, as stated above. However, some missionaries have been able to hire servants to prepare food for them, to whom they pay a wage of 40 ligatures annually. But this service is much lighter compared to others. Sometimes it also happens that debtors, because of the disgrace inflicted on slavery, hire another person to take the place of the slave, and this person receives a wage of 20 ligatures each month, although his work is not worth so much. One slave was hired for a new price of 3 ligatures per month, but in the house of a certain widow to whom he provided very light service. The sum of 5 ligatures is the lowest and rarest price, and the sum of 20 ligatures is the highest, and yet ordinary. Therefore, I believe that the true and legitimate price of the labor of slaves must be sought among these two extremes, taking into account the severity of this labor as explained in the preceding section, number 3. If hired slaves are lacking in Cambodia, there are not lacking other workers, such as carriers, boatmen, etc., who receive, in addition to food (which here is of lower price), half a ligature per day for their wages, or 15 ligatures in a month. These are the only points that I know that can be brought forward to estimate the value and price of the labor of slaves. I know that the labor of hired workers is heavy and continuous, while the service of slaves, although sometimes heavy, is sometimes remitted. Therefore, taking into account this difference, if we follow the milder and more favorable side, and suppose that a slave earns only 6 ligatures per month, it follows that he receives interest of 72 for 100 annually! Who could endure such oppression? 5.

[*Latin ed. p. 135*]

APPENDIX I. 155 In the tribunal of Penance, having faith in the words of faithful men who declared themselves to be inhuman to their servants, and striving to incline others to a milder course, I often ordered my penitents to remit to them at least some portion of their debts each year, so that the debt of 100 *ligaturas* might be extinguished after 5 years of service. But I scarcely ever found even one or two penitents willing to obey: all, clinging

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to custom, resisted, and argued in bad faith that the labor of the servants scarcely equaled the expenses of their food and clothing. If, however, we are to listen to the words of the servants, and to believe our own eyes, it is certain that they are never idle, but are occupied daily from morning until evening with various tasks; and this is true. For if the masters derived no profit from the labor of the servants, they would not trouble themselves to buy servants. Here, almost a fourth of the population is held in servitude. When a Cambodian has earned a silver coin through his own industry or labor, he quickly seeks to buy one or two servants, in order to indulge in idleness and live off the labor of others. Although this servitude is called improper, since the servant is a pledge of the debt and retains the right to redeem himself, it is nevertheless often perpetual. For the master claims the use of the servant's labor as interest: therefore, the debt remains entirely outstanding, and the servant cannot free himself unless he contracts another debt, by binding himself to another master, and thus, while the servitude remains, only the masters change, unless the servant has parents or relatives who are willing and able to help him. — And regarding the most grievous plague to which we intend to offer a remedy, we implore the Holy See to deign to send us instructions, so that, standing firm, we may unanimously maintain the right path amidst so many and daily difficulties. In order that I may briefly indicate the principal difficulties with which we are troubled, the following questions are proposed: 1. Can the faithful living in Cambodia, with a safe conscience, claim the labor of their servants or debtors for themselves, as has been explained above, without diminishing their principal sum in any way, and this, excluding any external title of danger, loss, or damage? 2. If the answer is no, by approximately how much should the masters diminish the debt each year or month, taking into account the labor of the servants and its value, as explained in numbers 3 and 4 above? 3. Is it permissible for the heir or creditor to claim the sons of their servants, born during their servitude, as their own servants, or to retain them, and to sell them as such, just as if they had been born of parents in true and proper servitude? 4. In order that these sons of the servants may be granted freedom, can the heir, with a safe conscience, demand anything from them, other than the expenses of their upbringing?

[*Latin ed. p. 136*]

156 APPENDIX I. As it is explained, and concerning money lent on loan:

1. Negatively.

2. If a just and true title intervenes for this loan, and if it is given at a fair price for the services and labors of the servants, according to common estimation, deducting the necessary expenses for their sustenance, then only that amount can be demanded as profit, or rather as just compensation, which the aforementioned title truly requires according to the scales of justice; the remainder must be relinquished to the detriment of

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the principal. However, if a just and true title does not intervene, then it must be remembered that nothing at all can be recovered from the loan, by virtue of the loan itself, beyond the principal, but the entire price and value of the works and labors, deducting as mentioned above the expenses for sustenance, must be relinquished to the detriment of the principal; and let it be noted. The meaning is: let the missionaries take care to dissuade the faithful from such contracts, which are very dangerous, so that they may provide for the tranquility of their souls.

3. Negatively.

4. Negatively, and let the Response be given from March 17, 1747, namely: Thursday, March 17, in the year 1847. — Regarding the question: Whether Christians can demand approximately one hundred francs from the sons of servants, who have become adults and are leaving their homes of their own free will, as compensation for the expenses of sustenance incurred during their childhood, the Most Reverend Fathers have ordered that it be answered: Negatively (See No. 2105, 4) (1). Regarding the generic question, namely: — Whether this method of acting is usurious, and if so, whether it should be condemned under penalty of restitution and denial of absolution. — This has already been provided for in the preceding responses, and, as regards the denial of absolution or the imposition of the burden of restitution, consult the approved authors.

(1) See Collection, Vol. XXVIII, 575; there, the questions and answers that are cited here have already been reported.

[*Latin ed. p. 137*]

137 Letters from the Most Holy Pope Leo XIII to William Alliata, President of the Council of the Anti-Masonic Association, and to the first assembly convened for that purpose. Beloved Son, greetings and the Apostolic blessing. It is always pleasing to Us that Catholics are gathered together to defend and promote the faith, under the auspices of the bishops. And, by the benevolent grace of God, such gatherings have increased daily in various fields, so that little remains that does not contribute to the benefit of the Church, and which, when discussed in Catholic assemblies, has begun to yield some fruit. Now, Beloved Son, you have informed Us that the plans of your Association have been so arranged that distinguished men from all nations will meet in Trent, in order that, with common purpose, they may deliberate against the Masonic sect, which is becoming increasingly insolent day by day, and that they may inspire themselves and others to resist and fight against it more vigorously. Let us pass over the rest, and affirm that this plan is to be highly commended. For it is evident that it will more widely instill the conviction that secret societies inflict damage upon the public and sacred affairs. — These matters, which We have found to be partly alarming, and having seized every suitable opportunity, We have repeatedly pursued, and We have dedicated Our efforts through Encyclical

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Letters, *Humanum Genus* and others, specifically addressed to the Italians, in the year 1884 and again in 1892. Indeed, the efforts of Our concerns have not been in vain: and among the results achieved, We believe that this assembly is also to be commended. We are confident that, given the number and importance of those who will attend, it will be such as the gravity of the matters to be discussed and the hoped-for benefits demand. — In order that the results may be as numerous as possible, it is essential that those who attend the assembly apply themselves diligently to the matter at hand and carefully investigate the reasons by which the force of the advancing sects can be more effectively countered. We have recently set forth these reasons in Our Encyclical Letters, and they can all be reduced to this: that in those very areas where the attack by the Masons is most intense, you must take up the defense. Therefore, these documents, which are evidence of the pontifical authority and providence, must be held and regarded as certain prescriptions and established norms, to which the greatest possible obedience must be given.

[*Latin ed. p. 138*]

138 LETTER: To you, while deliberating, and to all those who, for the same cause, might offer their talents and efforts. Certainly, as we have said before, the most audacious dogmas of impiety, which that sect follows, and the arts with which it strives, bring about a gradual decline and, of themselves, lead to ruin, if Catholic men would take greater care to defend the face of the Church. For they trust in lies and darkness; but if the appearance of truth is removed, those who rightly understand their wickedness will not want to, and will detest, such perversity. Therefore, moved by the urgent charity of Christ and of souls, we commend your endeavors and pray that the goodness of God may favor them. We are confident that your meeting will provide new incentives for Catholics, so that, sparing the erring, they may not yield to error, and that the most excellent goods which Christ has bestowed upon men may not be violated in any way. May these things be accomplished according to your wishes. To you, beloved Son, and to all who are present at this gathering, we impart, as a witness of the heavenly gifts and of Our benevolence, Our most loving Apostolic blessing in the Lord. Given in Rome, at St. Peter's, on the 11th of September, 1896. LEO XIII, POPE.

• • FROM THE HOLY CONGREGATION OF THE COUNCIL OF PARIS. REGARDING THE NULLITY OF MARRIAGE. May 25, 1895, and March 28, 1896. Session 24, chapter 1. Concerning the reform of marriage.

COMPENDIUM OF THE FACTS. Peter, of the diocese of Bayonne, being 22 years of age, having been captivated by love for Margaret, a young woman of the same diocese, decided to marry her. But the father of this young man opposed such a marriage, and denied his consent, unless the son gave him the sum of 100,000 livres, from a conspicuous inheritance

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bequeathed to him by his deceased mother, which Peter refused to do.

[*Latin ed. p. 139*]

PARISIAN. 139 When, with ardent love and excessive familiarity with the young woman, he hastened to arrange the marriage, and since, according to the civil law of France, a man was prohibited from marrying until the age of 25, and could even, without the father's consent, contract marriage before the Church, the plan of the couple was to go to Tunisia and there enter into a religious marriage. Having agreed on this plan, the couple, in April of 1880, set out for Tunisia, together with Margaret's mother and her brother, with the intention, as they themselves claim, of contracting marriage before the Church, and then returning to France so that, as a man of greater age, they could also contract the marriage which they call "civil." They seem to have spent a few days in the town of Pau, then in Marseilles, and finally in Hippone (Bône) in Africa, where they stayed for several days with the lawyer Dubarbier, who, so that the desired marriage would not be delayed any further, arranged for R. Desplas, the parish priest of Hippone, to send a letter to the Superior Religious of Carthage, to be presented to the Apostolic Vicar of Tunisia, and he also chose two friends who would act as witnesses at the marriage ceremony. On May 22, 1880, they arrived in Tunisia, and on the 24th of the same month, before Father Emilio a Trevi, of the Order of the Capuchins, the General Vicar of the Apostolic Vicar, Peter and Margaret were joined in the bond of marriage in the parish church of the Holy Cross, and it was noted in the parish marriage records that the couple resided in Hippone. A few days later, the newlyweds, having left Tunisia, returned to Hippone, where, as is said, they stayed for a few days, and then departed, finally reaching Julia Caesarea (Algiers), where they remained for almost two years, until they returned to France. However, when Peter reached the age of 25, because he led an immoral life and indulged in adulterous affections, the woman refused to contract the civil marriage, and, with his continued bad behavior, in the year 1884, she abandoned him.

[*Latin ed. p. 140*]

14,0. PARISIEN. With the passage of time, she was informed, as she recounts, that her marriage was invalid due to the non-observance of the Tridentini form. Residing in Paris, in the year 1892, she approached the archiepiscopal Curia, requesting that, through a preliminary process, her marriage be declared null due to the lack of proper canonical form. Since it was not sufficiently established that she resided in Lutetia Parisiorum, the woman obtained from the Supreme Pontiff permission for the Parisian Curia to be delegated to initiate the process. Therefore, the Archbishop of Paris, having accepted the delegation with the power to delegate further, immediately, through a duly constituted tribunal, examined the plaintiff, her aforementioned husband, and several witnesses; until, on July 14, 1894,

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a judgment was rendered declaring the marriage null, since it had been celebrated before a priest who was not her own pastor.

SYNOPTIC DISCUSSION: DEFENSE OF THE WOMAN. The plaintiff's advocate, in order to more clearly demonstrate that the marriage was vitiated by the defect of lack of proper form, divided his argument into three parts, and in the first, he showed: That the Tridentinum decree "Tametsi" (Although), chapter 1, session 24 concerning marriage, is still in force. Indeed, the Sacred Congregation of Propaganda Fide, on September 20, 1763, decreed: "Let the decree of the Sacred Council of Trent concerning clandestine marriages be published in every parish of Tunis and Algiers, observing the form prescribed by the same decree, and let the verbal declaration be upon the Most Holy [Father], and then let the instrument of this publication be sent to the Sacred Congregation." Furthermore, both the Prefect and the Apostolic Vicar of Tunis sent instruments to the Sacred Congregation regarding the completed publication in the year 1769. (Gasparri, *De Matrim.*, vol. 2, page 517; and Mansella, *De Impedim. Matrim.*, diriment., page 133). In the second part, the advocate wished to show: That no delegation was granted to the priest of Hippona, nor to the Apostolic Vicar of Tunis, by the priest of either of the spouses, nor by the Ordinary of Bayonne, to bless the marriage. For, the advocate stated, the plaintiff herself confesses: "Nous n'avons même pas songé à..." (We did not even think to...)

[*Latin ed. p. 141*]

PARISIAN. 141 requested a delegation, certain in advance of the refusal of the Reverend Father, "and this is also implicitly the case, but is confirmed by many witnesses. Indeed, Margaret's mother stated: "Before leaving France, no request was made in Bayonne or Mauléon-Soûle to obtain any permission whatsoever." Adelinda Robineau testified: "No delegation was requested, as far as I know, from the Bishopric of Bayonne, nor from the parish priest of Mauléon." Eugenius Communay testified: "They departed without any authorization, neither from the parish priest of Mauléon, nor from the Bishopric of Bayonne." The same is declared by Noemis Tixier, parish priest Charbonneau, and the parish priest of Mauléon himself, writing to the actress: "I do not recall having given any delegation whatsoever with a view to your marriage." Furthermore, the advocate continues, no delegation was given by the parish priest of the city of Mauléon or Pau, nor by the Ordinary of Bayonne, until it is proven, both because such a document is not found among those presented to the Apostolic Vicariate of Tunet, and because not a word nor a syllable is found in the marriage book. Finally, turning to the third point of his defense, the advocate seeks to demonstrate that the woman resided in the city of Mauléon, while the man resided in the city of Pau, when in May 1880 they went to Hippona to enter into marriage with the consent of the parish priest of Hippona, and

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that they did not acquire a domicile or quasi-domicile there. If we inquire about the woman, he says, where she had her domicile when she arrived in Hippona in May 1880, it immediately becomes apparent, according to the law, that the domicile of minors is considered to be in the place where the father of the family, or, if he is deceased, the mother of the family, has their *lares*. Voet, in ff. lib. 5, tit. 1, n. 100, and Lauren. For. eccles, lib. 2, quaest. 78. This applies all the more to a girl of 15 years of age. However, regarding the mother's domicile in the city of Mauléon, at the time of the marriage, as the advocate claims, there can be no slight doubt. Indeed, the actress stated: "I have lived in the city of Mauléon since the age of 7 until my marriage... I lived with my mother and my brother." This is confirmed by...

[*Latin ed. p. 142*]

142. The Parisian [witness] testifies, both personally and through witnesses. The same is confessed by the widow Reyé and by Adelinda Robineau. Furthermore, the defender of the accuser argues, the domicile of the man in the town of Pau is demonstrated with no less evidence. Indeed, when questioned about the place where he resided before the marriage, he responded: "I had my residence in my native city of Pau until the age of 18." Then, after 18 months spent on a ship, and for a few months before the wedding, he resided in the place of Mauléon, and he testifies that the domicile of his family is the city of Pau. And among the documents which the man obtained in order to contract the marriage with Tunet, there exist certificates of baptism received in the town of Pau, and two declarations from the syndic of that place, one of which testifies that he was born there, and the other that he "as a property owner in Pau, had never contracted marriage before the civil official." From these witnesses, according to the lawyer, it is clearly evident that the family of the man has resided in Pau from time immemorial, and that Peter remained there continuously until the age of 18. And if he subsequently did not remain for a longer period in his native place, while his family remained there permanently, this occurred because he undertook a journey to America, and also made other journeys; he visited Paris several times at his grandfather's house, and for a few months before the wedding he resided in the city of Mauléon, near his fiancée. Nor does the defender of the assertion of the widow Reyé wish to create difficulty, namely that the man "had for a long time left, and forever, the paternal home." For she speaks of the residence of Peter together with his father and his family, which is evident from what has been stated above. "Certainly," she says, "at his marriage he could not have thought of going to live with his father. His father was remarried; there were young children, a stepmother; moreover, he himself had the fortune of his mother." And certainly, the orator says, Peter never wished to live with his father, since a serious disagreement had arisen between them for

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some years. For the father was suffering from a grave illness, which his first wife had left him with a large inheritance for one son.

[*Latin ed. p. 143*]

PARISIAN. Since the young man was of age, and having seized the opportunity, having been asked for his consent to the marriage, he did not hesitate to demand a very large sum, 100,000 livres, for the granting of his consent; the young man, on the other hand, was greatly displeased to be forced either to buy his father's consent with so much money, or to enter into marriage outside of France. Later, the advocate argued that the betrothed, upon arriving in Hippona to celebrate the marriage, had not acquired a domicile, or at least not a true domicile, there. Regarding domicile, he stated, he did not need to provide proof; for, as Voet teaches in *Pandectae*, book 5, title, § 92, a domicile is legally considered to be established in the place where one has established the center of his affairs and fortune, from which he would not depart, unless compelled, and from which, when he departs, he appears as a traveler: *I. Cives 7, Cod. de incolis*. Hence, the same author, in *I. c. % 98*, states that the acquisition of a domicile in a certain place requires both intention and action. "It is certain that a domicile is not established solely by the intention and destination of the father, nor by a mere declaration without action and fact," *I. Domicilium 20, I. Eius qui 17, § Si quis 1, ff*. Add Reiffenstuel in *Decr.*, book 2, title 2, § 2, n. 17. "True domicile is established not by bare intention and assertion, but by intention and action together." Nor do Zallinger and others disagree. Certainly, the advocate said, it would be ridiculous to suppose that the betrothed had established the center of their affairs in that most remote city, that they would never leave it unless compelled, and that, having departed from it, they would appear as travelers. Furthermore, it is beyond dispute, according to the advocate, that the betrothed arrived in Hippona to prepare for the marriage of Tunet, and remained there for only about seven or eight days, and indeed, according to the advocate Dubarbier, they stayed there. But, the advocate observed, those who remain in a foreign house for about a week are not considered inhabitants, but guests and travelers, and therefore it is repugnant to say that they acquired a domicile there. *Text. in I. 1, § Haec autem, vers. Hospes, ff. de his qui deiec*. Therefore, the Cardinal...

[*Latin ed. p. 144*]

144 PARISIEN. From Lucca, *De Servit*, discourse 82, paragraph 3: "One is said to be a resident who has established a home with the intention of residing there, in contrast to a guest, who, although he may actually reside there, is not considered a resident." Therefore, since neither the man nor the woman intended to establish a home in Hippo, nor could it be said that they had settled there, it is clear that they could not have acquired a home

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there. Furthermore, the defense of the actress is irrelevant to the fact that when the man was asked, "Where were you planning to move your home after your marriage?" he replied: "Bonn"; "that you intended to reside in a separate house," and that when asked, "Was that house already prepared?" he asserted, "Only after the marriage, but it had been sought after immediately." For, he himself said, it would be entirely wrong to infer from this that, having had, albeit briefly, and not fully realized, the intention of moving their home to Hippo after the marriage, and that the house had only been sought after before the marriage, and not prepared, that they had immediately lost their native home in the city of Pau and acquired another. But furthermore, since such an intention would necessarily have had to be communicated to others, and especially to the woman's mother, and since no witness has indicated this, it must be entirely excluded. Finally, the man himself, a little further on, falls into a clear contradiction when he explicitly states that, when undertaking that journey, he had no other intention than to get married, and that he had not spent even an hour in Hippo before the marriage. Indeed, when asked, "When exactly did you leave the city of Mauléon, and for what purpose?" he replied: "I left this city in order to go to Tunis to have a marriage celebrated there." When asked, "What were your intentions in leaving Mauléon?" he replied, "I had no intention other than to get married, and I did not stay anywhere before leaving the city of Tunis." Therefore, the speaker is completely mistaken when he claims that, in the marriage register of the parish of Santa Croce in Tunis, it is stated that the couple acquired a home in Hippo. For, the priest of Hippo does not explicitly affirm this, and from the documents presented before the celebration of the marriage, it is clearly evident that the man was in the city of...

[*Latin ed. p. 145*]

PARISIAN. 145 Pau, and the woman having resided in the town of Mauléon. But, the advocate argues, the spouses could not have been subject to the parish of Hippo, nor does the concept of "quasi-domicile" support this. It is indeed required by law that, in order to establish a "quasi-domicile," one must have the intention of residing for a considerable time in the place where one establishes one's residence. Hence, all the Doctors unanimously teach that "domicile" differs from "quasi-domicile" only in that the former requires the intention of perpetually inhabiting the place to which one has transferred one's "lares," while the latter requires the intention of inhabiting the place for a greater part of the year. Such a residence is entirely required for "quasi-domicile," as Reiffenstuel states in paragraph 3, de Cianci in dispatch number 60, Schmalzgrueber in the same title, paragraph 150, Pirhing in the same title, paragraph 19, Barbosa de Off. Episc, part 2, paragraph 32, number 68, and many others. Furthermore, the advocate continues, it is not possible to require a longer period of

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residence in a place in order to presume the intention of inhabiting it for a greater part of the year, for Benedict XIV, in the well-known Constitution *Paucis*, which was issued just a few weeks ago and which provides a permanent rule for judgments, declared that at least one month's delay is necessary for marriage. And this delay, the advocate recalls, is unsuitable for establishing a "quasi-domicile," if someone seeks a foreign jurisdiction solely with the intention of entering into marriage, and not with the intention of residing there for a long time, as stated by the same Benedict XIV in Institution 33, § 4, and by the Holy Council in its Congregation on February 22, 1831. "Sacra etc." decided that a declaration should be given in the following abstract form: "A man and a woman, departing from the place of their residence, without the intention of abandoning it, and going to the place of another parish, solely with the intention of celebrating their marriage there, and not of establishing a domicile, have entered into marriage before the authorities of that place. It is requested that the Holy Congregation declare whether such a marriage is null or valid." - On February 22, 1831, "Sacra etc.," according to what is proposed, decided that it is null. Acts, Volume XXIX, page CCCXXXIX, line 10.

[*Latin ed. p. 146*]

146. PARISIEN. Given these premises, the advocate attempts to prove that the spouses did not intend to establish a domicile in Hippona for a significant portion of the year, or that they did not have the intention of residing there for a significant portion of the year. Indeed, the woman, from the very beginning, was completely ignorant of what was required for the validity of the marriage and did not consider at all the acquisition of a quasi-domicile. "With regard to the validity of my marriage," she stated, "I was thinking of absolutely nothing; I was then too young; I was only 15 and a half years old; I could only do what my mother required. I did not know what marriage was. I know that in the marriage certificate, we were considered to be domiciled in Bonn, a fact that I have never been able to understand." Vidua Robineau stated: "The young woman allowed herself to be led along without understanding anything." These statements are consistent with the testimony of the sacramental witness Pisani and the parish priest Charbonneau. Finally, the woman's mother believed: "As soon as a priest agreed to receive us in his church, we considered the marriage to be valid." And concerning the man, the parish priest Charbonneau testified: "He acted in bad faith, defrauding the law. He did not at all intend to establish a domicile in Bonn. In Pau, immediately after the separation, he repeated everywhere that Madame Reyé had been his mistress and not his wife," and Adrian Lagarde reports that, after the separation from his wife, he said, "Fortunately, I was never bound." Afterwards, the prosecutor inquires as to what intention the spouses had in going to Hippona, and for how long they remained there. If one listens to the man, his stay in that

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city before the marriage was so brief that he himself scarcely remembers it. After stating this, he adds that he (the spouses) left this city (Mauléon) in order to go to Tunis, with the intention of contracting a marriage there according to the laws of the Church, and he states that he traveled directly (from Mauléon) to Tunis and that he had no intention other than to contract the marriage, and that he did not establish any residence before his departure from the city of Tunis. There, however, they did not have the intention of staying for a long time, nor of establishing a domicile, but only the intention of contracting the marriage.

[*Latin ed. p. 147*]

The witness, however, recounts the matter as follows: "We had set out with the intention of getting married... We made a stop in Pau, then embarked on another journey to Marseille, where we stayed with Mr. Durectement for about eight days in Bonn, where he is a barber and lawyer. From there, we went to Tunis with the intention of staying only for the time strictly necessary for our marriage." Therefore, they stayed with the family of Dubarbier in Bonn for approximately eight days, and, as the advocate observes, they did not even consider prolonging their stay for a greater part of the year, as if to acquire a residence, but only thought of the marriage in Tunis that they intended to enter into promptly. Indeed, the woman continues: "We did not make any arrangements to get married religiously before Tunis; but we simply spoke to Mr. Dubarbier, who gave us two of his friends to be the witnesses to our marriage – in Tunis." They arrived in Tunis on May 22, 1880, that is, two days before the wedding, and left on May 27th or 28th. She adds: "We left Tunis around May 27th or 28th. From there, we returned to Bonn, where we stayed for about eight days. From there, we went to Constantine, to Setif, and we must have arrived in Algiers around the middle of June." With similar circumstances, the advocate states, the matter is recounted by Margaret, the mother, Adeunda Robineau, Eugenius Oommunay, Noemis Tixier, Pisani, and Bourgoin, the witnesses to the sacrament, the wife of the lawyer Dubarbier, and the parish priest Charbonneau. Furthermore, according to the advocate's defense, the parish priest of Bonn did not report anything to the Superior of the Religious Order of Carthage: "I am told by a respectable and trustworthy person that there was no canonical impediment" between the betrothed. For if this were truly the case, it would have had to be demonstrated by some document and declared in the marriage book, as is always done in such cases. However, as it clearly appears from what has been explained so far, no delegation was sent by the parish priest from either of the betrothed, nor did they acquire a residence in Bonn. Therefore, the aforementioned

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assertion of the parish priest is entirely without merit.

[*Latin ed. p. 148*]

148. The Parisian [lawyer] notes that the witnesses to the marriage, Pisani and Bourgoin, after examining all the circumstances, and especially the fact that the bride and groom "came with the intention of making their marriage as quickly as possible," were strongly suspicious that the marriage would be invalid, and therefore did not wish to perform their duties as witnesses. However, after insistent requests from the lawyer Dubarbier, they reluctantly agreed. Indeed, Bourgoin said that "he hesitated to serve as a witness," and Pisani confessed: "I initially refused, saying that I did not want to participate in a crime."

OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. The defender of the marriage asserts, with clear evidence, the validity of this marriage. And first of all, he marvels that Margarita suspects that her marriage is not invalid due to any flaw of clandestinity, but only twelve years after the marriage, when the apostolic vicarius Suter, the priest Desplas, the parish priest of Hippona, and the jurist Dubarbier, and the priest Dubarbier, who was afflicted with a mental illness, had all certainly passed away, not only knowing the facts recorded in the parish code, but also other matters that were not publicly disclosed. However, from the beginning, she opposed it, answering the judge's questions: "Since your marriage in Tunis, have you been considered the legitimate wife of Mr. Cazenave de la Roche? Have you had children? Have you believed that you could, in conscience, fulfill your religious duties, and approach the sacraments?" Margarita replied: "Since my marriage in Tunis, I have considered myself the wife of Mr. de la Roche. I have not had any children, and I have always fulfilled my religious duties and maintained all my habits of piety without any scruples of conscience." Nor is Peter's behavior different, who, when asked: "Since your marriage in Tunis, have you considered yourself legitimately united to Madame Cazenave de la Roche?" replied: "Yes."

Furthermore, the lawyer states that Margarita's line of reasoning is not new and recalls the case of Lazarina Massol d'André, in the court of Aquen, or Massilia, on February 18, 1889. In that case, it was about Lazarina Massol d'André.

[*Latin ed. p. 149*]

PARISIAN. 149 and Alfred d'Outhoorn, of Marseilles, who were unable to celebrate their marriage, because Lazarina's mother opposed the marriage, petitioned Helvetia and were married on October 5, 1863, in the city of Agaune, located within the territory of the diocese of Sion. The parish priest, Luder, wrote in the parish marriage register: "In the year 1863, on October 5th, in the Church of St. James in Augune, Valais, Switzerland, in the presence of publications, and of a delegation from the curate Mantel

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of Vevey, I, the undersigned, declare that I blessed the marriage of Alfred Eugène, Baron d'Outhoorn, and Lazarina Massol d'André." Alfred and Lazarina did not remain in the city of Tunet, in the town of Agaune, for long, as did Peter and Margaret. Nor is it established that Alfred and Lazarina contracted their domicile in the place of Vevey. Therefore, the defender argues, the aforementioned parish priests Mantel and Luder, and the priest G-uiol of the diocese of Marseilles, the general spiritual vicar, who had said to the priest Francisco Gignoux: "As General Vicar of Marseilles, I grant you, or to any priest that you designate, the jurisdiction to bless this marriage," are to be considered. Since, in the marriage records, neither the aforementioned delegation of the Marseilles vicar, nor the names of the priests Guiol and Gignoux appear, the marriage is declared to be invalid due to the defect of secrecy. However, the Sacred Congregation, after repeated deliberations, ruled in favor of the validity of the marriage. In the case of Peter and Margaret, according to the guardian of the bond, the public records shine so brightly that there is no room for doubt regarding the value of the marriage; but if, furthermore, there were to be inquiries made regarding documents or facts not subject to public scrutiny, it would certainly not be necessary to conduct an investigation in Paris. Therefore, from the very beginning, the defender declares that, if anyone believes that the value of the marriage has not been established beyond all doubt through documents that are subject to public scrutiny and have been made public, an investigation should be carried out in the place where the marriage was celebrated, with all relevant evidence presented for examination by those who are instructed in the matter. Above all, he says.

[*Latin ed. p. 150*]

150. The Parisian, the Capuchin Father Aemilius of Trevi, who at that time was Chancellor of the Apostolic Vicariate, who received the consent of Peter and Margaret for the marriage, is he still alive? If he is alive, it is absolutely necessary to discuss the clandestine nature of the marriage, in his presence. The advocate, proceeding to the facts of the marriage, insisted, and urged that Margaret, as she wished, should not accuse those who worked to bring about the marriage. For it is stated in the depositions that the intention to celebrate the marriage was conceived towards the end of the year 1879, and that the priest Dubarbier, from the very beginning, demonstrated to the betrothed the necessity of fleeing to foreign lands. On April 9, 1880, the birth certificate of Peter was presented; on April 24, the birth certificate of Margaret; on April 10 of the same month, the baptismal certificate of Peter; on April 28 of the aforementioned month, the baptismal certificate of Margaret; on April 22, the certificate of Peter's freedom to marry; on April 23, the certificate of Margaret's freedom to marry. The marriage, however, was celebrated on May 24, 1880. As for all things proceeding correctly, the advocate stated, the priest and jurist

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Dubarbier, the parish priest of Hippona, Father Bresson, or Delattre, the superior of the religious of Carthage, Suter, the Apostolic Vicar of Tunis, and Father Aemilius of Trevi, worked diligently. Furthermore, the advocate notes that these men, who worked to bring about the marriage, testified in public records that the law of the Council of Trent had been observed. These declarations are entirely unusual, the defender of the bond observes, and have no place when the documents themselves, which serve for the celebration of the marriage, can be made public. For then, in the parochial archives, it is not the affirmations of ecclesiastical men, or of parish priests, but the documents themselves that are preserved. In short: when the Apostolic Vicar affirms: "In the form prescribed by the Council of Trent and the only legally recognized in the Regency," and when Father Aemilius of Trevi affirms: "After all the documents required by ecclesiastical laws had been presented to this Vicariate," and when the parish priest Desplas...

[*Latin ed. p. 151*]

PARISIAN. 151: "Apart from the documents that will be provided specifically for this purpose, I am informed by a respectable and trustworthy person that there is no canonical impediment." However, these individuals are not deceived, but rather they are deceivers. For, if in the celebration of such a marriage, nothing other than public records were present before their eyes, and if the law of the Council of Trent was not observed in the least, then it is foolish to suspect otherwise. The advocate states: "The canons do not allow those who object to a marriage celebrated without permission from the proper pastor to be heard indiscriminately, but they distinguish between the proper pastor and any others whatsoever. If the proper pastor immediately proclaims the clandestine marriage, stating that he did not grant permission, he is heard, and it is incumbent upon the priest who performed the marriage to prove either that permission was granted to him, or that one of the parties to the marriage was subject to him. However, anyone else who proclaims the clandestine nature of the marriage is not heard, unless he demonstrates that permission was not granted and that the parties to the marriage belong to another parish," citing Sánchez De matrim., lib. 3, disput. 35, n. 5; Barbosa De offic. et potest., episc., alleg. 32, n. 136; and Mascard. De probat., conclus. 984. The defender then states: "In truth, the marriage in question was celebrated in the year 1880, and neither Margaret's nor Peter's pastor proclaimed that marriage to be clandestine, but only Margaret. Therefore, according to the defender, at least three things must be demonstrated cumulatively: firstly, that permission was not granted by the pastor of the place of Mauléon, which is Margaret's proper parish; secondly, that Peter's proper pastor at that time; and thirdly, that permission was not granted by Peter's pastor." However, the advocate for the marriage argues that the argument presented by Margaret is of no value. For, when the present trial began, she requested in writing from

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her pastor that he declare whether he had delegated authority to anyone concerning her marriage, to which he responded: "Madam, in response to your letter, I have the honor to declare that I have no recollection of having granted any delegation whatsoever with regard to your marriage." But, the defender exclaims, no sane person would write a letter of this tenor.

[*Latin ed. p. 152*]

152. The Parisian [lawyer] further argued that the written statement from the parish priest constituted irrefutable evidence demonstrating that Margaret had not received secret permission from her parish priest. For it is well known that severe penalties are imposed in France upon priests who involve themselves in marriages prohibited by civil law. Therefore, priests, whenever they assist those intending to marry in defiance of civil laws, take all possible precautions to ensure that their actions cannot be proven before a secular court. Moreover, the lawyer stated, it is known that priests can, and indeed must, deny, even under oath, any public testimony regarding a secret dispensation granted by a priest, especially while the priest who granted the dispensation is still alive, as ruled by S. Bota, decision 370, part 18, volume 1, recent. Therefore, the advocate for the sacrament concluded, since Margaret has no other arguments in her favor, the marriage is already proven valid. However, for the sake of thoroughness, he further inquired whether Peter Cazenave had his own parish priest. If so, the lawyer wished to present evidence demonstrating that Peter had not received any permission from his own parish priest. However, nothing of this kind appears in the records. Margaret sent a letter to her own parish priest, and received a response; but we do not know whether she wrote to Peter's parish priest, or whether he responded. Where, then, is the irrefutable evidence of a secret dispensation granted by Peter's parish priest? The defender exclaimed, "Is it just to portray the most learned men, who have exerted all their efforts in the celebration of this marriage, as inept, foolish, and indeed impious and sacrilegious, without any evident proof?" In truth, he continued, if the marriage is considered to have been celebrated in violation of the law, then the authors of the fraud would be the priest Dubarbier, his lawyer brother, the parish priest of Hippona, the superior of the Carthaginian fathers, the vicarius apostolicus of Tunis, and Father Aemilius. The couple themselves deceived no one, but simply followed advice. Furthermore, Margaret confessed: "If we went to Tunis, I believe it was because we thought..."

[*Latin ed. p. 153*]

PARISIAN. 153 had suggested Monsieur l'Abbé Dubarbier. Regarding the validity of my marriage, I was absolutely thinking of nothing... As for the domicile, I had nothing to say, because nothing was asked of me." Peter, however, although he himself desires the marriage to be annulled, nev-

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ertheless, in response to the question, "Did he indicate to the priest of the church of Tunes, Mauléon, or Bonn, as his domicile?" he replies: "I believe I must affirm that I responded to the priest that our domicile was Mauléon, and I did not present any documents other than those listed above." Moreover, the defender of the sacrament continues: "The parish priest of Hippo wrote to the superior of the fathers of Carthage three days before the celebration of the marriage: 'Apart from the documents that will be provided for this purpose, and which I have seen, I am informed by a respectable and trustworthy person that there is no canonical impediment between the young man to whom I am attentive and the person he desires and wishes to marry.'" Furthermore: "The documents pertaining to this matter, which the parish priest of Hippo confesses to having read, include everything that is usually required in the celebration of marriages. Therefore, when the parish priest of Hippo said, 'I am informed by a respectable and trustworthy person that there is no canonical impediment,' he necessarily refers to the impediment of clandestine marriage, which has been removed by a secretly granted dispensation. However, there are three things, beyond any doubt, according to the defender: namely, 1. that a delegation intervened; 2. that it was given by him who possessed ordinary power over the betrothed; 3. that the author of the delegation delegated according to the law so that his name would remain hidden: 'By express delegation of the ordinary authority.'" Indeed, the lawyer says, only French parish priests could freely grant a public delegation. Therefore, the actress's lawyer is mistaken when he believes that the parish priest of Hippo acted in the celebration of the marriage as if he believed Peter to be subject to him. It is sufficient to read the letter, which was sent to him three days before the celebration of the marriage. There, Peter is called "the young man-"

[*Latin ed. p. 154*]

154. PARISIAN. "I, the bearer of this letter... concerning the young man to whom I am devoted"; he never declares him to be subject to himself, nor does he mention anything similar. However, the words "domiciled in Bòne," which were inserted into the marriage book by Father Aemilius, were undoubtedly added "in order to cover the responsibility (of the author of the delegation) before the civil authority," as was done in the aforementioned Aquen or Massilien. Furthermore, the defender argues that the delegation was not necessary. Certainly, if either of the contracting parties lacked their own parish priest, the marriage could validly be celebrated before any parish priest; Sánchez, *De Matrim.*, book 3, disputation 25, no. 14. It is certain that he is without a parish who, having lost his former one, has not yet acquired another, Sánchez, *loc. cit.*, 4. Finally, it is certain that he who, having left his parish, if he stays elsewhere without the intention of establishing a domicile or quasi-domicile, whether intentionally or unintentionally, or if he chooses, or does not choose, the place to which

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he intends to migrate, is considered a wanderer with respect to parishes, until he actually transfers his *lares* to a new parish, Sánchez, *loc. cit.*, 4. With these principles of law as a premise, the speaker asks, where did Peter have his domicile or quasi-domicile? He does not speak of the domicile of origin. It is well known that, in the celebration of marriages, the parish of residence, and not the parish of origin, is considered; thus, Barbosa, *De Officio et Potestate Parochi*, chapter 21, no. 36. And Sánchez notes in his work, book 3, disputation 23, no. 7, § Tertio, that if the parish priest of origin were to attend the celebration of marriages, it would be considered an act concerning wanderers. Indeed, he himself does not deny that Peter was a parishioner of origin in the city of "Pau," but Peter had no parish priest of residence anywhere. It is certain that the parish priest of origin ceased to be the parish priest of Peter's residence at the time when, after his mother's death, Peter left his *paternae* home with the intention and in fact did not return. For it is known that Peter lived in a college for the purpose of study until the age of 18, and that he had long since decided in his mind not to return to his parents' home, and in fact, he did not return. For as long as he was in the college...

[*Latin ed. p. 155*]

PARIS. For 155 days, he remained in the town of Mauléon. During Margaret's vacation, Peter traveled there. Having completed his studies, at the age of twenty-nine, Peter went to America. After 18 months, he returned, and, according to the testimony of his mother, he first stayed for some time in Bordeaux, and then, suffering from poor health, he remained at Margaret's house for about three months. Afterwards, he went to Paris, to the town of "Mauléon," and finally, now here, now there, he never stayed for long in the town of "Pau," having left the college. Indeed, the lawyer observes, as soon as Peter left the protection of his homeland, he rented out the house that had come to him by inheritance. Moreover, he did not sell it, because, "since he himself had a Judicial Council, he could not do anything." Truly, a dwelling place, or almost a dwelling place, cannot be conceived without an open home. From Peter's entry into the college until the present time, a considerable period of years has passed, the defender of the sacrament concludes. But not for a moment during all those years did Peter change his mind about this matter. "For a long time," said Margaret's mother, "he had left, and forever, the paternal home. I do not know if he could have the intention of settling anywhere after his marriage." With these things noted, the question to be resolved is whether the opinion of the Archdiocesan Court of Paris should be confirmed or rejected in this case. To this question, a response was given on May 25, 1895: "Delay and write to the Most Reverend Archbishop of Paris, according to his wishes." The intention was: "that the parish priest of Mauléon be thoroughly examined in secret and under oath; that it be inquired of the Algerian Court whether

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it is true that Peter contracted a second marriage according to the law in Algiers, and if so, what reason was given for the first marriage contracted by the same Peter in Tunisia. Finally, that the Reverend [person] be heard again."

[*Latin ed. p. 156*]

156. PARISIAN. Charbonneau, the parish priest of Maillé, was asked to state how he knew that no authorization had been given for the frequently mentioned marriage. The Parisian court, having carried out the required procedures, sent a new report in November of the previous year. The plaintiff's lawyer, in his new argument, maintained that, based on the overwhelming evidence from subsequent documents collected by the Parisian court, it was clear that the marriage of his client with Peter was null. He noted that, in a brief summary of the facts and reasons presented in the initial hearing of the case, the parish priest of Mauléon testified, in accordance with the decree of the Sacred Congregation of the Council, after having been formally examined under oath, that he had, before the celebration of the marriage, known absolutely nothing of the intended marriage of Margaret and Peter, of the father's dissent, and of the couple's intention to travel to Tunis in order to contract the marriage, and therefore, that he had not granted any authorization. And the priest, Leo Charbonneau, who was questioned to explain how he knew that no authorization had been given for the celebration of the marriage, declared, as the lawyer stated, that he had heard from the woman herself, at a time when he was not suspicious, that there had been no authorization. Finally, with regard to another prescription of the Sacred Congregation of the Council, the lawyer noted that Peter, before the Vicar General of Algiers, swore: "I truly contracted a second religious marriage in Algiers on March 2, 1886, in the cathedral church, before Mr. Abbé Pascanau, the Vicar of that church, with Mademoiselle Jeanne Adèle Ursule Communay, a resident of Algiers, from a respectable family. I did not inform my new wife, her family, or the clergy about the marriage contracted in Tunis." But the man, now repentant of his wrongdoing, "ardently desires to be able to approach the sacraments. M. Communay, who was aware of this situation after the marriage, shares the same sentiments." Therefore, from this sworn deposition of the man, it is clearly evident, the lawyer concluded, how easily he could have contracted a second religious marriage in Algiers in the very cathedral church.

[*Latin ed. p. 157*]

PARISIAN. It is necessary to present some document, of ecclesiastical authority, by which the validity of the marriage can be proven. From this fact, it follows spontaneously that it would be no great wonder if, a few years ago, Peter and Margaret, in the neighboring diocese, namely Tunet,

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were able to be joined in marriage without any delegation from their own parish priest. The defender of the Sacrament, on the contrary, observes how the E.E.P.P. [Ecclesiae Excellentissimae Praelati Provinciales – Most Excellent Provincial Prelates] order that the parish priest of Mauléon secretly and under oath examine the couple. But this parish priest, as the records show, was subjected to an examination, indeed, but not in secret; and this circumstance, as the advocate claims, is of the greatest importance, for it concerns a parish priest who is summoned to testify whether he himself gave permission for a marriage to be contracted contrary to the laws of the country. And this permission would have been granted out of a sense of duty. For Peter says: "The proposal of marriage arose from affection and the desire to repair a fault committed between them." Indeed, according to the opinion of the doctors, the parish priest is not at all obliged to grant permission to those publicly questioned by a superior or judge in these circumstances. The S.C.C. [Sacra Congregatio Consilii – Holy Congregation of Counsel] also prescribes: "That the Algerian court be asked whether it is true that Peter Cazenave contracted a second marriage according to the laws of Algiers, and if so, what reason was given for the first marriage contracted by him in Tunet." But from the Algerian court, this is the only fact: the Vicar General examined Peter and scrutinized him only with himself. And this examination must be considered invalid, according to the famous Constitution "Dei miseratione" [By God's Mercy], in which § 7 states: "Whatever is done in judgment without the defender of the marriage being lawfully summoned or notified is declared null and void, and we decree that it is to be considered null, void, and of no effect, as if that party had not been summoned or notified, to whom it was absolutely necessary to summon or notify, according to the prescriptions of the laws and canons, for the legitimate validity of the judgment."

[*Latin ed. p. 158*]

158. PARISIEN. Moreover, the defender notes that the Holy Congregation did not order that Peter be brought before the examination again, but rather that the Algerian Curia, after examining the parochial and episcopal records, should determine whether and by what evidence Peter had obtained permission to marry someone other than Margaret. On this matter, the Curia remains silent, and Peter states: "I did not inform my new wife, her family, or the clergy about this marriage contracted in Tunis." Finally, the Most Eminent and Reverend Fathers decreed, the orator states, "that the Reverend Charbonneau of Mauléon should be heard again, so that he may state how he knows that no authorization was given for the frequently mentioned marriage." For this parish priest, in the initial judicial examination, asserted: "No authorization was requested, either from Bayonne or from Mauléon"; and when called again to the examination, to provide a reason for his assertion, citing numerous inconveniences, he refused to ap-

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pear before the court and only by letter declared that he had learned from the plaintiff: "That they had left France without carrying any letter from the parish priest of Mauléon." Therefore, the witness in his own case relies on the famous assertion: "No authorization was requested." This is consistent with the decision of the Rota, 301, n. 20, part II, which states: "Therefore, the commonly accepted axiom is that no credence should be given to witnesses whose statements are contradicted by the evidence." Furthermore, according to the defender of the sacrament, it does not necessarily follow from the fact that Peter and Margaret did not carry a letter from the parish priest of Mauléon with them that permission was not granted by the parish priest of Mauléon; but rather, if permission was given and not withheld by the parish priest of Mauléon, nothing prevents the parish priest of Peter or the Ordinary of Bayonne from having granted permission. Having noted these points, the defender of the marriage presents a dilemma. Either Peter was, or was not, under the jurisdiction of the parish priest of Mauléon. If the former, then the evidence exists from which it is clear that Peter did not receive permission from his own parish priest. For in this regard, absolutely nothing remains in the records. If the latter, then nothing can be said about the defect of clandestine marriage. Indeed, it can only be spoken of a clandestine marriage when it is certain that each of the parties is under the jurisdiction of a parish priest.

[*Latin ed. p. 159*]

PARIS. 159 Having considered these matters, the purpose was to determine whether the judgment of the Archdiocesan Court of Paris should be confirmed or overturned in this case. RESOLUTION. After deliberation by the Sacred Congregation on March 28, 1896, it was decided to respond: The judgment should be confirmed. FROM WHICH THE FOLLOWING ARE GATHERED: I. Marriages, in order to have validity, must be celebrated before the proper parish priest, or another priest by his or the Bishop's delegation. II. It having been demonstrated that the proper parish priest was absent and that all formal delegation had been prevented, and therefore the Court of Paris having confirmed the judgment in which no marriage was declared valid. MONTISFALCIS, REGARDING THE NOMINATION. On July 13, 1896, FOR THE CANONICAL BENEFICE. By summary petitions. SUMMARY OF THE FACTS. Maria Catharina Pieri, acting according to her supreme will, as evidenced by the declaration of her testamentary executor, presented to the records of the Episcopal Archive of Montisfalcis, and ordered that a property, designated by her, should constitute the endowment for a canonical prebend, to be established in the Cathedral Church; and she granted to the Reverend Chapter of the same Church, with regard to the nomination, the right of nomination, except for the first nomination, which should be made by her fiduciary heir, provided that he does not predecease her; in which case, the same Chapter shall immediately acquire the right of

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nomination. The pious testatrix ordered that the most worthy among her relatives should be nominated, first in morals, then in knowledge; if these are lacking, a priest of Montisfalcis should be nominated, excelling in the same requisites, and from the most prominent families.

[*Latin ed. p. 160*]

160. MONTISFALISCI. When the aforementioned benefice became vacant, Stephanus Volpini, Umbertus Foderini, and Philippus Balestrieri appealed to the Chapter, requesting that they present a candidate for the said position; but the Chapter considered that none of the applicants possessed the qualities required. Of these, one, namely Philippus Balestrieri, was found by the Sacred Congregation to have violated the law. When the Bishop was consulted for information, he reported that the Chapter had judged that none of the three applicants, even though the parents of one are believed to be witnesses, could be chosen to hold the canonical office, since they lacked the qualities desired by the pious foundress; and especially because they are distant from the Sacred Orders, both in age and in studies. The Ordinary stated that the opportune time for the nomination had already passed, and that the Chapter had relinquished its right to nominate for this occasion. The first nomination having been declared invalid, a new edict was issued for the second. At that time, only R. Ioseph Perla, a priest from Montisfalisci, appeared, who is neither a relative of the pious foundress, nor belongs to the families of that place; but he is distinguished by his morals.

A Synopsis of the Discussion:

OFFICIALLY, the objection was raised against the petition of the applicant, Philippus Balestrieri, that his patron had unduly intervened in the matter. However, it is true that he is not thirty years old, as the Bishop seems to estimate in his information; but rather, he is 26 years old, having been born on November 18, 1869. His tutor presented a testimonial, attesting that the aforementioned applicant had already completed the second year of the gymnasium under his care, and is now capable of entering the third year. Two parish priests testified to his good morals, having lived in their parishes in recent years. However, the mother and other relatives of Philippus Balestrieri claim the passive right of patronage, while others deny this right to the other candidate, Umbertus Foderini, because he is not connected to the pious foundress by any bond of kinship.

[*Latin ed. p. 161*]

MONTEFALCISI, 161, concerning matters reported by the Bishop. It is indeed certain that Philip is the nephew of the Testatrix, a matter not in dispute, as also testified by the Syndic of Montefalcis, with the presentation of genealogical tables. – The priest Joseph Perla, whom the Bishop favors, is certainly neither related to the foundress, nor is he descended

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from a noble family, as the foundation documents require. Furthermore, it is beyond doubt that those who possess the right of passive patronage can challenge the presentation made by the patrons, if the latter do not comply with the laws of the foundation, as is evident from the entire Title "On the Right of Patronage." For it is the law that the one who is found to be passively called is considered presented by the founder himself, if he fulfills the conditions established by the founder, and therefore is to be instituted, even if the patron refuses to present him. – Piton, *De controversiis partibus allegatis*, 66, n. 10; Rocca, *Disputationes iuris patronatus*, chapter 190, n. 21; Rota decisions, 135, number 2, part 19, recent; and in this case, through opposition or comparison, which the passively called party makes before the Ordinary, his right is said to be acquired, since opposition is assimilated to and equivalent to presentation. – Piton, *loc. cit.*, Allegation 85, n. 2. Conversely, it could be argued that no obligation exists to present someone to a benefice unless, at the time of presentation, he is worthy and capable, that is, possesses the qualities required by the Holy Canons; otherwise, no presentation is valid. I say – at the time of presentation – which Reiffenst. addresses in *De iure patronatus*, number 71: "Nor is it sufficient that, shortly after the presentation, and indeed before institution, he becomes qualified, for example, by becoming a cleric, by being absolved from excommunication, etc." – Barbosa, *De officio et potestate Episcopi*, Allegation 72, n. 77-78; Gonzalez, *ad Reg. 8 Cancell.*, Gloss. 2, number 66. And Reiffenst. himself gives this reason, *loc. cit.*: "…because with benefices, capacity at the time of presentation is considered, since through it, the right to the thing is immediately acquired," citing *Argumenta Eccl. S. Mariae De Constitutionibus*. However, Philip's mother states that her son is still not enrolled in the clergy, as evidenced in the Acts, Volume XXIX, page CCCXXXIX, line 11.

[*Latin ed. p. 162*]

162. MONTISFALISCI has not been successful, although he desires it, because, lacking the necessary funds, he cannot bear the expenses of the benefice. Having considered these matters, it was asked what answer should be given. RESOLUTION. The Sacred Congregation, after deliberation on June 13, 1896, decided to respond: Since those who are passively called lack the qualities prescribed by law and by the Foundress, and considering the cession made by the Chapter, the Bishop should provide.

MECHLIN. DISPENSATION FOR MARRIAGE. March 28, 1896. Session 24, chapter 5, concerning dispensations for marriage. Francis, a schoolmaster, aged 38 years, was, on September 13, 1888, before the parish priest of the Church of Notre Dame in the Diocese of Mechlin, joined in marriage with a girl named Eugenia, aged 22 years, according to the laws of Trent. The spouses lived together in the same dwelling and on the same bed from

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the day of their marriage until the month of September of the year 1892, and, as it appears, showed manifest signs of disagreement. However, after the aforementioned time, the husband was forced to flee, because he was being pursued by the ministers of public justice, on account of scandalous acts of impurity committed against several schoolboys, and the wife returned to her father's house. Soon afterwards, Francis fell into the hands of justice and, being convicted of a most heinous crime, was condemned to serve a five-year prison sentence. It was then that Eugenia revealed to her mother that, during the entire period of their marital cohabitation, the marriage had not been consummated, due to Francis's impotence. She asserts, therefore, that from the very first nights of their marriage, she had vainly demanded the marital debt from her husband; for he was unable to complete the act of copulation, but used various pretexts to avoid it.

SUMMARY OF THE FACTS.

[*Latin ed. p. 163*]

MECHLINIEN. 163 He suffered from impotence. And the unfortunate condition of the marriage was not changed in the future. For, as Eugenia confesses, Francis never demanded marital relations; and he only experienced intercourse when requested by his wife, but he was never able to penetrate her vagina; nor did he wish to consult experts in the healing arts regarding his defect, despite the woman's repeated pleas. Therefore, Eugenia, paying particular attention to the shameful condemnation of her husband, as well as his prodigality and harsh nature, decided to abandon him and requested a dissolution, that is, a civil divorce. Having easily obtained the divorce, Eugenia immediately appealed to the ecclesiastical authority, petitioning the Archbishop of Mechlin to declare her marriage null and void due to the husband's impotence. However, since the Archbishop considered the husband's impotence to be prior and permanent, he requested permission from the Supreme Pontiff to initiate a process regarding the non-consummation of the marriage in order to obtain a dispensation. The Archbishop's petition was immediately granted by the Sacred Congregation of the Council; therefore, he, having established a tribunal, without delay initiated the process through a delegated judge. First, the plaintiff and her witnesses were examined. The man was examined in prison, but he refused to answer the judge's questions regarding his impotence and the non-consummation of the marriage; indeed, he did not allow an examination of his body, and he refused to summon witnesses. Regarding this matter, the judge, in order to supplement the deficiencies of this kind, considered it necessary to subject the plaintiff to a new interrogation, and to officially examine the local parish priest and the doctor Bruylants, who, having previously examined Eugenia in the divorce proceedings, had testified that she was still a virgin. Finally, after all the procedural acts were

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completed, the Archbishop sent the case to the Sacred Congregation in May 1894, adding the following information: "It is permissible to highly commend the prayers of the wife, since serious reasons exist, so that the woman is no longer compelled to cohabitate with her husband, and sufficient evidence exists regarding the non-consummation."

[*Latin ed. p. 164*]

164. MECHLINIEN. "For the wife, according to the testimony of all, most earnestly affirms that the marriage was never consummated, and this assertion is especially confirmed by the testimony of three physicians, among whom were two professors of the University of Cattolica in Louvain, who testify concerning the physical integrity of the woman in such a way that there seems to be no room for doubt. "Furthermore, the silence of the husband rather confirms than refutes the wife's words, since it is precisely he, who, *desiring to restore cohabitation*, would have an interest in affirming the consummation, if it had indeed taken place. "Nor is the wife to be considered less deserving of compassion, because, before submitting her cause to the judgment of the Church, she sought refuge in the civil court to obtain a divorce. This error is not uncommon, and it arises both from the fact that the faithful are often compelled to turn to the civil authorities for the purpose of contracting a civil marriage, and from the fact that, not sufficiently distinguishing between the separation of body and goods and the very divorce, they are more easily persuaded by lawyers, especially those addicted to the errors of liberalism, to seek a divorce rather than a mere separation: which is what happened in this case. Moreover, it has been ascertained that the wife, otherwise pious, acted in all good faith."

SYNOPTIC DISCUSSION. OPINION OF A THEOLOGIAN. The theologian, I, now performing the function of a member of the Sacred Congregation, having discussed this case on the unfortunate day of September 20, 1895, and having examined the formal procedures, I found certain omissions in the examination of the woman's body. There were lacking a bath, a matron, midwives, etc. The experts themselves completed the entire matter. Was a medical examination necessary in this case? It does not seem so to me, at least interpretively. In the instruction *De iudiciis ecclesiasticis causarum matrimonialium pro imperio Austriaco* given, § 174 admits the practice of medical examination; it is admitted in the Third Council of Baltimore.

[*Latin ed. p. 165*]

MECHLINIEN. 165 num. 304. It would follow, in the remaining regions, that unless a special reason is taken into account, the same practice does not imply a substantial defect. Is it not safer to rely on the immediate examination of experts rather than on reports and testimonies? It is said that doctors in Tortosa, in the medical section, part III, chapter I, § 18; in Morgagni's *Opera*, mixed works, page 3, page 43, are often mistaken, even

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when instructed by physicians; and the Sacred Rota has declared this in its decisions from the year 16, in 1890. I add that the Holy Congregation has sometimes been compelled, despite the objections of midwives, to turn to doctors. See the Neapolitan matrimonial dispensation of April 22, 1826. And it must be admitted that day by day the reason for not employing doctors in matrimonial cases is diminishing, just as it is not advisable to prefer doctors to midwives in childbirth. Moreover, on the part of the husband, beyond the consent stated in the petition, there is a lack of examination of his person and of testimony derived from it. But he has never professed to want to provide this, and the Holy Congregation has repeatedly judged that, despite this reluctance, a dispensation should be granted. See Milan, Dissolutions of Marriage, May 24, 1733; January 7, 1783; Naples, June 27, 1822; Naples, April 28, 1827. In these cases, the Holy Congregation has sometimes and twice even set a further term for the aforementioned examination to be carried out and for the acts of the process to be completed, after which it was judged that contumacy should be declared for the subsequent confession of non-consummation and of his impotence; and therefore, it would never be possible for him to take other vows, even if a dispensation were granted to the other spouse by the Most Holy. But the special condition of the husband in our case might perhaps add injury to injury. The matter could be remedied by some condition, as will be explained later. Thirdly, it should be noted from the acts that no oath was administered to either party or to the witnesses at the end of the examination, to the effect that they had spoken the truth. A special law on this matter is found in the Instruction of the Sacred Congregation of August 22, 1840, § Si quid. I believe that the indulgence of the Supreme Pontiff is necessary to remedy this, especially since in the signature of each document that is appended...

[*Latin ed. p. 166*]

166. MECHLINIEN. The deposition and the initial act of taking an oath, although seemingly different, contain virtually the same thing. Now, addressing the matter itself, it is necessary to set aside the question of nullity, the most serious of concerns, based on the circumstances. Nevertheless, I would not set aside the doubt that referred to it. For, a dispensation can be granted conditionally even when the validity of the marriage is doubted, but it cannot be granted absolutely when there is doubt. In the first case, both doubts must be raised; in the second, only one doubt is sufficient: Whether consultation with the Holy See is necessary, etc. However, from what will be said below, it will become evident that, in this case, the validity of the marriage can be doubted for some time. Therefore, both doubts must be raised: I. Whether there is proof of the nullity of the marriage in this case, and to what extent. II. Whether consultation with the Holy See is necessary for a dispensation from a valid but unconsummated marriage in this case. To these, I would respond: To I, see the provision in the second [question].

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To II, affirmatively, and with the intention that the Archbishop should take care that the man does not proceed to other marriages without consulting the Holy Congregation. Regarding the affirmative response to the second question, and the reason behind it, it is sufficient to say this. If there is a difficulty, it would be sought in cases more favorable to a dispensation than to the fact of unconsummation. Indeed, using the threefold reason, I firmly believe that unconsummation can be demonstrated in this case. 1. By the affirmed statement of the parties. Regarding the woman, she, with respect to what concerns her, was cited and questioned twice, at the beginning of the process and at the end, and it is remarkable how she always responded with prudence, clarity, and coherence to all that was appropriately presented to her regarding the matter. As for the man, he only responded to the questions with silence: "If Madame justly requests the dispensation from the marriage, as far as I am concerned, I do not request this. I am willing to resume the common life, if my wife consents." What interpretation should be given to his silence regarding consummation or unconsummation?

[*Latin ed. p. 167*]

MECHLINIEN. 167 marriages? tacitly admitting non-consummation. The woman's case would have been contradicted as much as possible. Furthermore, what else do her responses to question 10 show: "Are you now considering submitting to a medical examination? No. I repeat that I will not submit to a medical examination, but I have no particular reasons to allege for this refusal." The testimony of the seventh witness. This is invoked in two respects: 1. for the credibility of the parties, or rather, for the lack thereof; 2. for the very fact of the non-consummation or consummation of the marriage, according to their knowledge. Two witnesses, in addition to those presented solely by Eugenia, are added by order of the Judge: Dr. Arthur Bruylants and the Reverend Mathias Oliver, Parish Priest and Dean. Furthermore, regarding the credibility of the parties, the Parish Priest says: "Yes, you can have complete confidence in Madame Eugénie; she is pious and attends the sacraments regularly, and enjoys an excellent reputation. As for the husband, he does not deserve to be trusted." To this, Dr. Bruylants adds: "I believe in the veracity of Madame, but I doubt that of the husband." Eugenia's Mother: "Yes, you can have complete confidence in my daughter Eugénie for all the depositions she has made, or that she would make before this tribunal." The Father adds: "I assure you of this under oath." The same is confirmed by other witnesses, whose words are given weight by the Parish Priest Olivier, who, in response to questions 10 and 11, stated: "Yes, I know (all the witnesses); they are all my parishioners and are all worthy of faith. Yes, Dr. Bruylants fulfills his religious duties and enjoys a good reputation as a doctor." Regarding their judgment concerning the non-consummation, with the exception of the witness

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Bruylants, all are based on hearsay, and indeed, only after the "desertum thalamum" (empty nuptial chamber). Finally, the medical judgment. As to how necessary this is in this case, see De Luca, *De Iudiciis*, section 33, paragraph 20, and the Abbot in Chapter 4, on Proof, paragraph 3. We have two appointed by the Judge: the distinguished Eugenium Hubert and the distinguished Carolum Ledresseur, both professors at the Catholic University of Louvain: one in obstetrics and gynecology.

[*Latin ed. p. 168*]

168. MECHLINIEN. One [degree] in theology, the other in medicine. Both attest to the woman's integrity. From all of this, I do not know if anyone can remain morally certain that the marriage was not consummated in this case. Let us examine the individual circumstances that arise in granting a dispensation. If the man's impotence, whatever its nature, has not yet been proven, it is certain that it cannot be excluded from the presented evidence, but rather it is highly probable. However, they say that this already provides a sufficient reason for granting a dispensation (Ursaja, vol. III, part. II, Disputation XXI, no. 30; De Luca, De Matrim., Disputation VII, no. 7), and this is the opinion of all, whether theologians or canonists. As the Most Reverend Fathers know, in order to obtain a dispensation regarding a valid but unconsummated marriage, it is necessary that two fundamental conditions be met: first, the fact of the marriage's lack of consummation, and second, the existence of reasons that warrant granting the dispensation. Once these are established, the Holy See usually always graciously grants the requested dispensation. The certainty of the fact of the marriage's lack of consummation is primarily established by the woman's testimony, which she has honestly given under oath, stating that from the very beginning of their marital relationship, although frequently solicited, she excused herself from fulfilling her marital duties to her husband under various pretexts; and that on other occasions, his attempts were always unsuccessful, as the man's virile member, upon erection, would soon lose its rigidity, so that it was never able to penetrate her vagina. Consequently, the woman herself often urged her husband to consult a doctor. These and other similar details, Eugenia has confirmed with great candor of mind, without ambiguity, without hesitation, and without any contradiction whatsoever, in another examination, fully satisfying all the doubts and the most discerning questions of the judge's delegate.

OPINION OF A CANONIST.

[*Latin ed. p. 169*]

MECHLIN. 169. Indeed, no one is ignorant of the value and legal weight of such testimony in demonstrating the truth of the lack of consummation, and this is taught by Spondenus in *Annotationes Eccl.*, year 1599, by

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Conrad in *Practica Disputationum*, book 6, chapter 7, and others. For in this case, it is not a matter of a simple and bare statement of fact, which could easily raise reasonable doubts about a lie, but rather of a confession supported by numerous circumstances, given by a young girl who is innocent and incapable of lying; and when asked by the judge, "When did you tell your mother that the marriage had not been consummated?" Candide replied: "The very evening of my husband's departure, I told my mother that it was impossible for my husband to be guilty of offenses against young boys, since he had never had relations with women, and that I myself was still as I was before my marriage." This testimony gains all its force and validity from the corroboration of seven witnesses. For the woman's close relatives by blood and affinity, and what is more, the parish priest of the place, Tirlemont, called upon by virtue of his office, not only do not contradict the woman's words in any way, but rather confirm what she has narrated, and with one voice declare Bugenia to be a most honest and entirely trustworthy woman. Furthermore, the testimony of the seven witnesses is such that, "although they cannot testify to the hidden fact, their testimony is nevertheless sufficient to be believed by the spouses," as stated by Cosci in *De Separatioribus*, book 3, chapter 2, number 138. And the reason is given by Turrecremata, according to St. Bonaventure in *Quaestionum in Quatuor Novissimis*, 2, cause 33, question 1, number 4: "Although there is never certainty about that act through evident proof of the fact, nevertheless, a man, for the most part, testifies through probable signs and conjectures; which, although they are not sufficient to generate knowledge, are nevertheless sufficient to generate faith or belief." And if anyone were to doubt the sound judgment of the young woman regarding the consummation, and if, at the very least, she could be deceived, the doctor, Ladresseur, is present, and when asked by the judge about the matter, he replies: "Madame Eugénie appears to me..."

[*Latin ed. p. 170*]

170. MECHLINIEN. "Sufficiently calm and composed to have been able to ascertain the introduction [of marital relations], either through the pain she would have felt, or through other sensations." In such a case, the absence of the seventh hand [i.e., the testimony of a midwife] on the part of the man, and his absolute silence regarding the consummation of the marriage, do not suffice; for, as mentioned above, the judge, by virtue of his office, finds that the man's silence rather confirms the woman's words; and in law, this is considered a tacit confession, especially in the case where the man would have more reason to affirm the consummation, if it had truly taken place, in order to restore marital relations with his wife after the completion of her penance. Furthermore, the absence of proof, arising solely from the bad will of one party, should not harm the other party, and therefore, in six hundred cases, the Sacred Congregation proceeded

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to grant the grace of dispensation, even if the seventh hand of the man was lacking, as in the case of the *Parisien*, March 28, 1857. In addition to the conclusive proofs presented to establish the moral certainty of the non-consummation of Eugenia's marriage, there is added the physical certainty derived from the ocular examination of the aforementioned woman, carried out by expert men. Besides the judicial depositions of the doctor who had previously examined Eugenia's body, and who declared her to be intact, two medical professors from the University of Catholica in Louvain, appointed by the archiepiscopal Curia, after completing the examination, testified that they found in Eugenia all the anatomical signs of virginity: an intact hymen, and the vaginal opening so narrow that it would not be possible to admit a normal male penis into it without signs of tearing of the membrane, or at least without an enlargement and deformation of the vaginal opening; and this, they add, even in the hypothesis that the male member had been below average in size. Indeed, these same doctors add an explanation of the facts deduced from the life of the man, whom they designate as perverse or corrupt in matters of carnal desire ("an inverti du sens génital"); and experience teaches that such men, for the most part, have little desire for the female sex. Furthermore, if we consider for a moment the common opinion of canonists...

[*Latin ed. p. 171*]

MECHLINIEN. 171. The opinion is given that, indeed, experts are usually employed not for testifying, but rather for judging, as De Luca, *de iudic.*, discourse 33, number 70, states. The Abbot, in *Cap. Proposuit* 4, *de prob.*, Trescus, Bishop, *for ens.*, chapter 572, number 48. And now, having said these things, it seems that no doubt remains in the case that the marriage was not consummated. Indeed, it is true that the examination was carried out directly by doctors and not by midwives, contrary to the prescriptions of the law, but today it has been discovered that the Holy See does not disapprove of this. Nor is it the case that the woman's bath was not performed prior to the examination; for the bath is not considered so necessary for uncovering deceptions that its omission constitutes a serious obstacle to ascertaining the truth, especially when there is no founded suspicion of fraud. Hence, in the Instruction issued by the Supreme Sacred Congregation for conducting the process in such cases, it is written: "If necessary, the woman's bath should be performed first, and then the physicians should judge." Finally, regarding the difficulty that the woman did not complain for four years about the husband's impotence, it can be answered, according to what is deduced by Sánchez, *De Matrim.*, book 7, section 109, numbers 6 and 7, and as Panimoll widely teaches, decree 15, year 14, that indeed, the woman should always be heard when she is prepared to demonstrate the state of her body in denying the consummation of the marriage. Therefore, the Sacred Congregation has ruled that, even if the

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woman had complained after three years or more, the marriage was sometimes dissolved, as in *Romana Matrimonii*, August 22nd and November 25th, 1840. The presumption of the consummation of the marriage, derived from the woman's long silence, must give way to the truth, which has been proven by other demonstrations, as Barbosa states in *lib. Decret*, title 26, chapter 1, number 8, Pontius, *De Matrim.*, book 7, chapter 66, number 11, and Constantinus, volume II, year 18. Furthermore, the woman herself assigns a reason for her silence, saying: "I did not tell my parents, nor to other people, because my husband had asked me not to say anything. I have often spoken to my husband about these difficulties."

[*Latin ed. p. 172*]

172. MECHLINIEN. He finally said that it could be as much my fault as his. After these things, regarding the reasons for obtaining a dispensation, I will briefly explain, since it will scarcely escape the notice of anyone reading that the reasons do not lack a certain appearance of fact in this case. And first, Francis's frequent excuses for not fulfilling his conjugal duties, his futile attempts to do so, the woman's integrity after four years of cohabitation, the husband's studious silence in this matter and his obstinate refusal to show his body, do these things not suggest to the mind of the judge a doubt of impotence? Furthermore, it is always considered the most just and weighty reason for obtaining the grace of a dispensation, whether it be for one spouse or the other, to have a doubtful or probable impotence. See Sánchez, lib. 2, disp. 16, no. 5; and Cosci, lib. 2, cap. 16, no. 197, and lib. 3, cap. 2, no. 386: "When impotence is alleged as the reason and cause for a gracious dispensation, it does not require certain and conclusive proof, but it is sufficient that said impotence be so probable that the Supreme Pontiff may consider it true, and be moved to grant the dispensation." To this cause, another of no less gravity is added, namely, the danger of incontinence for the girl, who is at a flourishing age and therefore of great spiritual importance. Thus, the Doctors unanimously teach, especially the esteemed Cosci, lib. 3, cap. 2, no. 107. A third reason can be found in the fact that the matter has already been favorably resolved in a judgment of separation before a secular tribunal. A fourth must legitimately be assigned to the alienation of affections and the impossibility of reconciliation. Ursaya, Discept. 21, no. 60 et seq., vol. 3, part. 2, and Discept. 7, no. 76, 77, vol. 3, part. 1. Let the woman be heard, who, encompassing many things, says: "Communal life would be impossible for me from now on; I could not return to him. I have suffered too much during the four years that I have been with him. He has never fulfilled his duties as a husband; he makes extravagant expenses."

[*Latin ed. p. 173*]

MECHLIN. "He has a very difficult character, and to all this is added a shameful condemnation." And indeed, if a man, when compared to

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beasts, is sometimes held in honor, this man becomes more contemptible, nay, abominable, when, before God and men, he is made noxious by detestable and infamous crimes, from which even nature recoils. And it certainly ought to be repugnant to an honest woman to lead a common life with such a man. Therefore, after considering everything, it seems to me that help should be offered to the unfortunate woman, and that the Most Reverend Archbishop of Mechlin should be consulted regarding a dispensation concerning her marriage, which has been contracted but not consummated, as is also the wish of the Eminent Archbishop of Mechlin.

OBSERVATIONS OF THE DEFENDER OF MARRIAGE, BY OFFICE. The marriage, which Eugenia, then aged 22, contracted on September 13th of the year 1888, with Francisco, a gamester, aged 38, declared after four years of cohabitation to be imperfectly consummated. The assertions of Eugenia are received with attentive ears by the most learned consultants, theologians, and canonists; they consider Eugenia to be trustworthy, and witnesses, including the seventh witness and the parish priest, attest to her fidelity; but Francisco stubbornly refuses to testify, either for or against the consummation of the marriage.

You seek a medical judgment according to the procedures of the Instruction issued by the Sacred Congregation of the Council on August 22nd, 1840. However, the judge, for some unknown reason, did not entrust the examination of Eugenia's body to three midwives, but to two doctors, who, without the presence of the honest matron, superficially performed the task. Despite these shortcomings, the doctors, as experts, declare what constitutes an argument for the lack of consummation, namely, the physical virginity of the wife, without leaving any room for doubt. Furthermore, the doctor Hübet says: "I notice some traces of old inflammation." The other expert, Ledresseur, says: "Upon examination of the external genital organs, I observe the persistence of the hymen, which is only slightly modified. It offers..."

[*Latin ed. p. 174*]

174. MECHLIN. On the right and left sides of the fissures, which are very shallow, and which do not appear to have been produced by sexual intercourse. To the inquiring judge: "Can the fissures that the hymen presents on the right and left not have been produced by sexual intercourse? Do these same fissures sometimes occur in virgins who have not undergone any attempt at coitus?" The doctor, Ledresseur, replied: "They do not resemble the irregular tears usually produced by sexual intercourse, and they can indeed be found in virgins." To the urgent judge: "Have you not noticed any traces of inflammation in the genital parts? Could this not have been caused by sexual intercourse?" The same doctor replied: "Madame Eugénie shows evident traces of inflammation of the internal genital organs. Yes, this inflammation can come from sexual intercourse, but it can

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perfectly well be found in virgins." Again, the judge: "Could it be argued that, if there are traces of old inflammation in the genital parts or fissures in the hymenal membrane, normal sexual intercourse was the cause; or does the current state of the organs exclude this cause?" To this, the doctor replied: "The current state of the organs rather favors the exclusion of this cause." Still, the judge: "Are you certain that a single sexual intercourse would have torn the hymen, so that after such an intercourse, the state of the organs would be different than it is now?" The doctor: "It is highly probable that a single sexual intercourse would have been sufficient, in the ordinary circumstances in which this act takes place, to tear the hymen and remove the characteristics that it still presents today. I do not dare to exclude the possibility of the contrary, because of the dilatability of the hymenal orifice, of which I have mentioned in my report, but this does not seem very probable to me."

[*Latin ed. p. 175*]

MECKLIN. 175 Therefore, physicians, being experts, discovered things which made the alleged integrity of Eugenia doubtful. And this, even though the experts did not examine the rest of the woman's body beyond the genitals, nor did they use a bath. Indeed, eminent doctors, among whom is Zachias, in *Quaestiones Medicae Legales*, book 6, title 2, question 7, numbers 3 and following, and book 4, title 2, question 3, number 13, present arguments for detecting the loss of virginity, not only from the vulva, but also from other parts of the body. Concerning the bath, the celebrated physician Paulus Brouardel, in the Parisian case, regarding marriage, on July 21, 1888, and September 7, 1889, warned: "It is possible that, under the influence of a bath, the laxity of the membrane may have been greater." With these observations, the purpose was to resolve the doubt: Whether it is advisable to consult the Sacred Congregation concerning a dispensation for a marriage that is valid but not consummated, in this case. RESOLUTION. The Sacred Congregation, after deliberation on March 28, 1896, decided to respond: Affirmative. PACTEN. OF PAROCHIAL RIGHTS. June 13, 1890. Session 24, Chapter 1, Concerning Reforms. COMPENDIUM OF THE CASE. In the town commonly called *divi Petri*, located within the Pacten Diocese, which is subject to the Archiepiscopal See of Messanensi, there has, from time immemorial, existed, besides one parish church under the invocation of Saint Pancratius, and one parish priest, holding the title of Archpriest, another chapel, dedicated to Saint Mary, which was in all respects subject to the parish church, so that the priests serving in this chapel were, at no time, considered as properly called archpriests, but rather as assistants to

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the archpriest, and in reality they were.

[*Latin ed. p. 176*]

176 PATTI. This church, which Saint Peter called "Pactas," maintained its administrative structure, as evidenced by the Acts, largely unchanged for nearly three centuries. When the episcopal see of Patti was vacant, the Archbishop of Messina, Father Bonaventura Secusio, during a canonical visitation of this diocese on May 6, 1607, acting as Visitor and, therefore, also as Delegate of the Apostolic See, seems to have established and erected the aforementioned parish of Saint Mary, which until then had been entirely dependent on the mother church, due to the excessive number of people. However, when deciding on the erection of this new parish, it is said that Archbishop Secusio decided to grant certain rights and privileges to the Archpriest of the mother church. A few days after the decree establishing the new parish, on May 19, 1607, the Archbishop himself, with a convened assembly and all due canonical formalities, appointed Ascanius of Salerno, with letters of collation and institution, as the pastor of the newly established parish of Saint Mary. This appointment was not received with joy by the Archpriests of Saint Pancratius. Indeed, from the very beginning, a fierce conflict arose and continued between the Archpriests and the pastors of Saint Mary; the former claimed that they had been deprived of their original parochial jurisdiction over the church of Saint Mary by this episcopal decree, while the latter maintained that they had, through this very decree, truly and properly become pastors. This assertion and denial of jurisdiction flared up repeatedly over a long period of years. However, in recent years, through the cooperation of the pastors of Saint Mary, the Archpriests have completely absorbed all jurisdiction over the church of Saint Mary and have exercised it freely until the present time. Finally, in the year 1892, Joseph Anzà resigned as pastor of Saint Mary, and on October 15 of the same year, he received a pontifical diploma of legal appointment to the parish of Saint Mary.

[*Latin ed. p. 177*]

SECTION 177. He obtained possession of the rectory. This man, bearing with difficulty the subjection of his parish to the mother church and to the Archpriest of St. Pancratius, as other pastors had previously endured, petitioned the Sacred Congregation, so that, according to the law of the Council of Trent, the essential and proper rights of a pastor might be conferred upon him by a solemn decree from the Archbishop of Messina. Indeed, the parties presented allegations; the decree of the erection of the parish was not exhibited, but letters were produced conferring the title of first pastor upon Ascanio Salerni; and other documents were presented by the Archpriest to prove the subjection of the Church of St. Mary, the authenticity of which did not enjoy complete firmness; therefore, the Bishop discussed

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the rights of the parties in his commended letters. Although the act of the erection of the parish cannot be shown, it is gathered from the act of the nomination of the first pastor, carried out by the Reverend Father D. Secusio, that the intention of the Archbishop was to erect a true parish in the Church of St. Mary, according to the norms of Trent. The reasons for the Ordinary to have been led to such an erection were grave and just, so that the Archpriest himself at that time made no opposition. Although the act of erection is hidden, it is evident from the document of the institution of the first pastor that he was granted the parochial jurisdiction without any limitation. The disputes between the pastor and the Archpriest had this sole purpose: that one might recover what he had lost, and the other retain what he had received. The Ordinary continues: even when greater usurpations of the rights of the parish were made by the Archpriests, the pastor of St. Mary elected was always chosen in the same way as the first, namely, with prior concurrence, according to the mind of Trent. With these and other observations, the Ordinary implored that the Sacred Congregation might decree that the pastor of St. Mary, according to his first institution, was a true pastor according to the mind of Trent, and that he alone should have the jurisdiction to celebrate the marriages of his parishioners.

[*Latin ed. p. 178*]

178 CONCERNING. the clergy. The Archpriest ought to act contrary to the sacred canons when he usurps such jurisdiction. However, the Archpriest ought to receive from the Parish Priest, according to ancient custom, 50 annual stipends, as a right of recognition and superiority, and all privileges ought to be reserved to him over the Parish Priest. A Synopsis of the Dispute: The Parish Priest contends that, according to a decree of collation issued by the Archbishop of Messina, the Parish Priest truly and properly renounced [his position], and therefore was invested with all the rights, duties, and privileges of a true and proper Parish Priest, according to the statutes of the holy canons, and especially of the Holy Council of Trent, Session XXIV, Chapter I, concerning reform. Indeed, the letters of collation are of the following tenor: "We, Brother Bonaventura Secusio, by the grace of God and of the Holy See, Patriarch of Constantinople, Archbishop of Messina, and Royal Counselor, etc., to our beloved son in Christ, the Reverend Doctor, of both laws, Don Ascanio Salerni, in the land of Saint Peter, in our Diocese of Messina, greetings in the Lord always. " Whereas, during the course of our Visitation of the aforementioned land, a certain Parish Church under the title of Saint Mary, in which the care of souls is exercised by several priests residing in the commune under the care of the Reverend Archpriest, beyond the greater Church of the aforementioned land under the title of Saint Pancratius, called the Archpriest, which the aforementioned Reverend Archpriest possesses from us, it has been decreed that it cannot be corrected with several curacies as an incompatible

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burden, but that each should be assigned to a specific individual. " Therefore, by ordinary authority, as well as by the decree of the Holy Council of Trent, and also by the sacred canons, the Apostolic constitutions, and the orders attributed to us, and by every other better means, we have decreed (because of the number of the people), so that the care itself may be... DEFENSE OF THE PARISH PRIEST.

[*Latin ed. p. 179*]

WHEREAS, [someone] may suffer some detriment, We erect the aforementioned Church of Saint Mary as a parish church, and We provide for a proper pastor for it, and because, by a public edict in due form, both on the doors of the aforementioned Church of Saint Mary, and of the larger Church of Saint Pancratius, and on the doors of Our metropolitan Church of Messina, the aforementioned [person] appeared, and no other, and in the aforementioned gathering, having been examined, presented, and subjected to a prior and rigorous examination regarding the doctrine of the sacraments, and regarding the administration thereof, as well as concerning the care of souls to be maintained, he was found, on the first day by Us, the synodal examiners, to be suitable and capable, by his own merits and virtue, to undertake the aforementioned care of souls in the aforementioned Church of Saint Mary; therefore, by these presents, We erect the aforementioned Church of Saint Mary as a parish church, with all its annexes and appurtenances, and with its explicit rights, especially in a certain act which We made during Our visitation of that territory, and according to the form of that act, by the aforementioned ordinary and delegated authority, as above, in which capacity We act, and in every other suitable manner, We confer [this] upon the aforementioned Reverend Father Ascanius of Salerno, and We provide for him in that office as long as he lives; therefore, We command, by virtue of holy obedience, the Reverend Archpriest, the Vicarious Forane, the clergy, and the people of that territory of Saint Peter, that each of them, when requested by you, the aforementioned Father Ascanius of Salerno, shall consider him to be, treat him as, regard him as, and admit him as the pastor of the aforementioned parish, and that they shall fully contribute to him the customary fruits from the aforementioned parish church, as expressly stated and assigned above in that very act, for the aforementioned burdens, and that they shall compel those who contradict or rebel against this by ecclesiastical censures. In witness whereof, etc.

"Given in the territory of Tortoreto, during Our visitation, on the 19th day of May, in the fifth indiction, in the year 1607. Brother Bonaventura, Patriarch of Constantinople, Archbishop of Messina."

[*Latin ed. p. 180*]

180. The pastor of Santa Maria then argues that he is immovable, and

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that, by his own right, he possesses the faculty of exercising his parochial duties, independently of any other pastor, especially because in the aforementioned decree of appointment, no restriction on the parochial duties has been made, and no condition or prerogative, or favor, either in favor of the archpriest, or in favor of the mother church, is apparent. This, the pastor believes, clearly proves that the church of Santa Maria was established as a true and proper parish, without any restriction or dependence on the archpriest of the mother church.

DEFENSE OF THE ARCHPRIEST. On the other hand, the archpriest of San Pancrazio argues that the pastor's intention might be admitted, if the establishment of this parish of Santa Maria had been made through a simple erection, but not through a dismemberment. However, since this parish of Santa Maria was newly erected by the Archbishop of Secusio through a dismemberment from its mother church, it must be considered whether in the decree of this erection (which undoubtedly should have canonically preceded the appointment of this parish to a new pastor) such limitations were established, by virtue of which the pastor of Santa Maria would at least in some respects remain subject to the archpriest of San Pancrazio. Furthermore, he argues, it is established by law that the Bishop, in the erection of a new parish, especially if it is done by separating it from the mother church, can establish limitations on the authority of the new pastor, for he is the one who delegates a part of his pastoral office to the new pastor. Therefore, if the Archbishop of Secusio established limitations in the erection of Santa Maria, these must be observed, and the pastor of Santa Maria, once established with these limitations, must always be subject to these same limitations.

The archpriest observes that it cannot be argued that the Bishop cannot diminish the rights of the pastors, or their office, which is established by common law; for this is true, if we are speaking of a pastor who is already established with all ordinary faculties, but not of a pastor who is newly instituted through the dismemberment of the mother church.

[*Latin ed. p. 181*]

SECTION 181. However, since the parish priest insists on this point, the Bishop cannot add limitations that diminish the ordinary power and the substantial duties of a newly instituted parish priest; on the other hand, the archpriest replies that the Bishop cannot, unless for a grave reason proven in an external forum, limit, suspend, or take away the substantial parochial duties of a parish priest after he has obtained them; but he can, in the decree of the erection of a new parish, which is made by the division from the mother parish, limit and diminish such power, even as regards the substantial parochial duties. Furthermore, the archpriest states that the Archbishop of Messina decreed the erection of Saint Mary's as a parish, and provided for it from his own resources; but that, by virtue of

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the decree of erection of May 6, 1607, he established certain rights of recognition and superiority for the archpriest of the mother church, which are set forth in the document presented, as follows: "Furthermore, the aforementioned archpriest is subject to certain obligations, namely, to pay each year twelve measures of grain, one measure of wheat, and one measure of barley, by reason of the right of recognition and superiority; likewise, the aforementioned archpriest must receive one measure for each deceased person, whether small or great; finally, it was determined that marriage cannot be celebrated in the aforementioned parochial church without the express written permission of the aforementioned archpriest, for which he must receive one measure; it was decreed that the archpriest must reside in the mother church." The parish priest of Saint Mary's rejects this document for many reasons, alleging that it lacks authenticity and is not worthy of credence; but the archpriest insists that this is not the case, not only in his own name. First of all, he observes that the document is written in an old hand, dating from a time not to be suspected, and is exhibited in the oldest books of the parochial archive, and that it is written in a style, character, and phraseology that are characteristic of the decree of the collation of a newly erected parish. The archpriest further emphasizes the value of the document, stating that no archpriest of the mother church has ever...

[*Latin ed. p. 182*]

182. PACTEN. They should freely use and enjoy these [rights], even though it is not denied that the archpriest has not always ensured uniform observance of these limitations and privileges, with disputes arising from time to time. The archpriest states that the rights of the mother church over its filial church are clearly demonstrated by the fact that, for a century and more, all these objections have vanished, and that the archpriest, without contradiction, has peacefully maintained and exercised these same, previously so fiercely contested, prerogatives, and has continued to use them. So much so that the parish priest himself admits: "Indeed, there is a deplorable inconsistency in the parish registers; some marriages are celebrated by the parish priest with the license of the archpriest, while others are celebrated by him with his own authority." Furthermore, as the archpriest adds, these authentic documents are also supported by the well-known principle in Chapter III, title 3, of *De ecclesiis aedificandis*, book III, which states: "Besides the right of patronage, the ancient mother church is to be given and assigned the honor due to it." The canonists teach that this honor consists of various things. Thus, Fagnanus, in chapter III, *Ad audientiam, De ecclesiis aedificandis*, number 8, explains: "A church built within the boundaries of another parish is to render some honor to the mother church of that parish," namely, an annual census as a sign of submission; or, that the clergy of the newly built church are to attend the larger church for baptisms, examinations, chapter meetings, and the like,

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or to pay those dues that chapels owe to the mother church, etc. Finally, documents published in printed books, from various places, are cited, in which each side attempts to demonstrate its own intentions. But these documents do not seem to settle the matter in favor of either side, because they can be adapted to the petition of either party, but more importantly, because their authenticity is...

[*Latin ed. p. 183*]

ARTICLE 183. It can genuinely and seriously be doubted whether certain matters, which have arisen in the past and even in more remote times, are truly established. From the nature of the question, it is easy to discern whether the Church of Saint Mary was truly erected as a parish church. Certainly, the rights of patronage and the obligations of obedience reserved to the mother church do not prevent such an erection; indeed, this is in accordance with the prescription of common law. Nevertheless, among these signs of subjection, it does not seem possible to include the right which the mother church would claim regarding the celebration of marriages. Indeed, especially after the Council of Trent, when marriages are to be entered into before the proper pastor, namely, the pastor of the church in which someone has his domicile, or maintains a quasi-domicile, it clearly appears that the right to celebrate marriages necessarily adheres to the office of the pastor, so that it cannot be separated from him by the Bishop. Therefore, if it could be demonstrated that this right was not granted to the Rector of the Church of Saint Mary, but remained intact with the mother church, then the matter of the parochial rights of the Church of Saint Mary would be settled. It should be noted that the current Rector of the Church, after the solemnities of the collation of parochial benefices, was instituted in this benefice by a Pontifical Bull dated October 15, 1893; in which these things are stated, namely: "The aforementioned parochial church, with its annexes (fruits), and with all its rights and appurtenances, We confer upon you by Apostolic authority." With these things noted, the following questions are to be considered: Whether the rights belong to the parish of the Church of Saint Mary in this case. And, to the extent that the answer is affirmative: What rights are due to the mother church in this case. RESOLUTION. After discussion by the Sacred Congregation, on June 1, 1896, it was decided to respond: To the first question, affirmatively. To the second question, with the understanding that any dues owed to the Archpriest are to be paid.

[*Latin ed. p. 184*]

184. AGREEMENT. The parish priest receives only fifty florins, as agreed upon with the Most Reverend [Bishop]. FROM WHICH WE GATHER: I. Since marriages must be celebrated before the proper parish priest, or before the parish priest of the church where either party resides or has a

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quasi-domicile, it necessarily follows that the right to assist at marriages is vested in the office of the parish priest, and cannot be separated from him by the Ordinaries themselves. II. Therefore, it could not be conceived that the church of Saint Mary was erected as a parish church, and that the right to assist at marriages remained in the mother church. THEATINA. REGARDING THE DISPENSATION FOR MARRIAGE. On the 1st of June, 1896, Session 24, Chapter 5 concerning marriage references. Joseph Giuliani, who was twenty-eight years old, at the urging of his mother, entered into a betrothal in October 1889 with a young woman named Nicolaa Antonia Masciarelli, who was seventeen years old; both were from the town of Casoli, in the Archdiocesis of Theatinae. However, the celebration of the marriage was postponed until the man reached the age required to enter into a civil marriage; but in the meantime, it was feared that the agreed-upon marriage might be broken by a certain young man who seemed to be pursuing Antonia. Therefore, it was agreed upon by the parties and their parents that the marriage should be celebrated before a church as soon as possible, in order to prevent any danger. Consequently, on November 27th of the aforementioned year, Joseph and Nicolaa were legitimately joined in marriage, but under the express condition that the betrothed would remain separated afterwards, and would not consummate the marriage until the celebration of the civil contract. And in fact, after the sacred rite was performed, each spouse returned to their own home, and there remained under constant...

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 185*]

THEATINA. For 18 months, he remained under the care of his parents, so that, as it seemed, he would not be alone with his wife for even a short time. After several months had passed, Joseph, in order to perfect the art of barbering, went to Lanciano with the consent of his wife and her mother. During Joseph's absence, a young man named Pantaleo di Bartolomeo from the place called Caldari, who already desired Nicola to be his bride, began to court her again; and she, being of a very gentle nature and influenced by the wicked designs of her sister and her father-in-law, did not resist the clever advances of Pantaleo. Blinded by his love, Nicola, without her mother's knowledge, fled with her lover on September 13, 1890, and entered into a civil marriage with him, from which union she has already had three children. The unfortunate Joseph, upon returning to his homeland, realized that he could no longer live with his wicked wife, and that his mother-in-law, who was otherwise weak and elderly, needed his help; therefore, he seriously considered taking another wife. And so, he presented humble petitions to the Supreme Pontiff, requesting a dispensation from his marriage, which had been valid but not consummated. It was

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noted that the procedural documents were not properly prepared; indeed, it is not certain from them whether the delegated judge, the clerk, and especially the defender of the bond, had taken an oath in the performance of their duties, nor is it established whether the spouses themselves and their witnesses had taken an oath to speak truthfully. On the contrary, the proceedings are attached to a judgment declaring the marriage to be unconsummated, which the judge, without being requested to do so and without having the authority to do so, issued. For the Sacred Congregation of the Council ordered the Archbishop of Theatine only to examine the proceedings in accordance with the Constitution *Dei miseratione* and the instructions of the same Sacred Congregation of the year 1840.

A SYNOPTIC DISCUSSION. The question is whether there is proof of the unconsummation of the marriage in this case, and it is considered that the answer should be affirmative. For the records show that the marriage was valid.

[*Latin ed. p. 186*]

186 The act of *theatina* [a form of sexual intercourse] is considered valid under this condition, that the custom of conjugal life between spouses is not established, nor is it consummated, unless after the completion of the civil act; and this appears to be confirmed by the entire conduct of spouses and parents, after the beginning of marriage, namely, by diligent vigilance to prevent spouses from ever being together, or from meeting even occasionally. Indeed, just as from the cohabitation of spouses arises the presumption that the marriage has been consummated, as the *Glossa* in chapter 4 states, "If anyone has received chastely"; *De Iustis De dispens. matr.*, book 2, chapter 10, number 24; *Pignatellus Consult.* 149, number 1, etc., so it seems that from the act of an individual custom or cohabitation not established, arises the presumption of the marriage not being consummated. This presumption, however, seems to gain less force from the argument that is deduced from the confession of the spouses, confirmed by the testimony of witnesses of the seventh degree. The confession of the spouses, which, when confirmed by the testimony of witnesses of the seventh degree, has great force in this matter, as argued in chapter 6, *De frigid. et malef.*, is added to by the argument commonly called "coarctata." To strengthen this argument, the most learned defender of the Sacrament, in a document addressed to the Sacred Congregation in Ancona, on April 14, 1894, noted: "It is not sufficient that the spouses do not cohabit, but it is absolutely necessary that the same spouses never meet in the same place, without any witnesses present, as stated by Conscius *De separ. tori*, book 1, chapter 16, number 14; and there - 'This can be proven by witnesses who testify that the spouses, after the marriage contract, never met together in the same place, or at least that they always remained in the presence of other people, and that they were seen by them to separate.'" However, in

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this matter, these things seem to be most strongly established, not only by the sworn faith of the spouses, but also by other witnesses, without any exception, including those of a higher degree. From these testimonies, from public reputation, and from other supporting evidence, which are abundantly presented in the procedural records, it seems safe to conclude that the spouses never...

[*Latin ed. p. 187*]

In Theatine, 187 individuals convened in the same location, but always remained in the presence of other persons, and these witnesses observed them separating, which, as we have noted, is sufficient to establish a lack of consummation. Furthermore, it appears superfluous to adduce the testimony of Pantaleon, who, according to the deponent's own knowledge, found the woman to be untouched, and the testimony of Nicolai Porreca, who states that he heard these words spoken by Pantaleon at a time when there was no suspicion. Therefore, it seems certain with moral certainty that the marriage in question was not consummated. However, there do not appear to be any reasons lacking by which the Roman Pontiff is usually moved to grant a dispensation. Indeed, due to the flight and corruption of the woman, and also due to the civil marriage contracted by her with the seducer, who is moreover an enemy of the Giuliani family, such a dissociation and aversion has arisen between them that no hope seems to exist of restoring the marriage. Furthermore, the civil bond already contracted with Pantaleone favors the dispensation, and due regard must be had for this, given the circumstances of the times, in order to avoid greater evils. The danger of scandal and perversion to Joseph also favors the dispensation; finally, the condition of the unfortunate seduced girl favors it, who, being released from the bond of the first marriage, could also contract marriage before the Church with the same person with whom she is now civilly united, and thus legitimize her children.

OPINION OF THE CANONIST.

The present question is reduced to this: whether the marriage between Joseph Giuliani and Nicolai Antonia Masciarelli remains valid or is unconsummated, since it is not permissible to dispute the value of the evidence, and whether there is grounds to implore the Supreme Pontiff to relax the bond of marriage.

With these premises, to the question of whether this marriage remains unconsummated, and whether there is grounds to implore the Supreme Pontiff for a dispensation from the bond of a valid, unconsummated marriage: I answer affirmatively. For it can be gathered from the judicial pro-

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cess that, with moral certainty,

[*Latin ed. p. 188*]

188 The Theatine tribunal, it seems, has found this marriage to have remained unconsummated, and to still be so. The basis for the judgment is provided by the acts themselves, by the groom, the plaintiff Giuliani, who, according to the Archbishop and "all the witnesses," is presented and commended as a young man of good character, honest, religious, incapable of lying or perjury, and to whom credence should be given, and they agree. Several witnesses were called, relatives, affines, friends, and numerous neighbors, all with one voice and unanimous accord, affirming the same thing concerning Giuliani's good life, and they state that they have never seen him alone with the bride, but always in the presence of her mother, or friends, and with these, which is noteworthy, also Pantaleo di Bartolomeo and Nicolaa Masciarelli agree. Therefore, as stated above, the unconsummation has been proven; the question remains whether it is necessary to consult with the Most Reverend Prince, so that he may deign to grant a dispensation concerning the marriage, which is valid but not consummated, as the plaintiff Giuliani earnestly requests and implores. But it is clear that there are just and weighty reasons in this case.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE, BY OFFICE.

Joseph Giuliani, a barber, declares that the marriage, which he contracted on November 27, 1889, at the age of 18, with Nicolaa Masciarelli, 17 years old, is imperfect. The most learned consultants, a theologian and a canonist, believe that the spouses were never alone together. But in my opinion, this is far from being proven. Concerning the matter, *De Separatoribus*, Book I, chapter 16, number 14: "(There) this can be proven by witnesses who testify that the spouses, after contracting the marriage, never met alone in the same place, or at least that they always remained in the presence of other people, and that those people saw them separate." However, it is established that the newlyweds were together in the same town of "Gasoli" for almost seven months; and that they were accustomed to meeting together in the same place. Who testifies that they always remained in the presence of other people, and that those people saw them separate? Not one person testifies to this from their own knowledge.

[*Latin ed. p. 189*]

THEATINA 189: Many speak of credulity; indeed, witnesses concerning credulity are of little value, as Leuren states. *Form. eccles. lib. 2, q. 612, n. 1:* (there) "Witnesses concerning credulity, that is, those who, under oath, declare that they believe that things are as they say; for example, by saying: 'It seems to me,' or 'In my judgment,' and even if there are

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two or more of them, they are generally or regularly not admitted nor are they considered valid... For since credulity is conceived only from various indications, conjectures, and presumptions, and at most is probable, and from the knowledge of others, they seem to affirm nothing certain, and therefore they fall far short of the nature of true witnesses, who testify from their own knowledge, or from what they themselves have perceived with their senses." Furthermore, it is widely known that the witnesses in the present case are based on false indications, conjectures, and presumptions: namely, "that Nicolantonia was never left alone and often confessed." If the mother's vigilance and the frequency of sacramental confession did not prevent Nicolantonia from fostering adulterous affections and conspiring to elope with her lover, it is foolish and absurd to believe that she did not, for almost seven months, even once embrace her husband, who was then alive. Others, however, do not even believe that the spouses were ever alone together, but only state that they did not see them together at any particular moment. But Pantaleo de Bartolomeo, it is said, testifies that he found the woman to be innocent. I reply: if honesty and freedom from partiality are required in those who give testimony, I do not know by what right this Pantaleo is considered a witness. Should one have expected that man of such depravity to denounce to the judge that he had joined himself in a pseudo-marriage to a woman oppressed by her husband? In order not to appear to be acting unfairly, I do not overlook the flaws in the judicial proceedings, and I humbly request that the written record be amended without delay with a "Negative." With these considerations, the purpose is to be undermined.

[*Latin ed. p. 190*]

190 THEATINA. A Question Regarding Whether Consultation with the Most Holy Congregation is Necessary for a Dispensation from a Valid but Unconsummated Marriage. RESOLUTION. The Sacred Congregation, having considered the matter, on June 1, 1896, decided to respond: Affirmative. DECREE OF THE SACRED CONGREGATION FOR RITES Concerning the Mass and Office of Saint Matthew the Apostle and Saint Agapitus the Pope. By Decree of the Sacred Congregation for Rites, dated February 5 of the preceding year, 1895, it was established that when, on the twenty-seventh day of September, the commemoration of Saint Matthew the Apostle and Evangelist is to be observed in the Office and Mass, and the Mass is celebrated for Saint Agapitus, Pope and Confessor, the following is to be observed for the clergy: For the First Nocturn, it is determined. However, to prevent certain difficulties, the Most Reverend and Venerable Lord Cardinal Lucidus Maria Parocchi, Bishop of Albano, and the Vicar of the Most Holy City, humbly requested of the Most Holy Pope Leo XIII that, henceforth, from the clergy of that City and its District, the following be always and in every case recited concerning the aforementioned Saint Agapitus:

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First, the Three Nocturns from the Common Office of Confessors; second, either the Homily on the Gospel for the Vigil, or the Mass for the Priests. When, however, the feast day of the aforementioned Saint, the Pope, occurs four times a year, the First Nocturn shall be: Laudemus. Furthermore, the Sacred Congregation for Rites, exercising the special faculties granted to it by the same Most Holy Pope, graciously granted the request, according to the petitions, observing the rubrics. Contrary things notwithstanding. July 24, 1896. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation. L. S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation. GENOA. Concerning the Beatification and Canonization of the Venerable Servant of God, Brother Franciscia Camporubeo, a Lay Brother of the Order of Friars Minor of the Holy Francis of Assisi, Capuchin. From the numerous family of Brothers Capuchin, which has always shone with universal virtue, the humble Brother, distinguished by the brilliance of his mind and simplicity, is presented. Born in the town of Camporubeo, in the Archdioecesis of Genoa, on December 27.

[*Latin ed. p. 191*]

From the records of the Sacred Congregation of Religious, dated 191 branches, in the year 1804, he was born of pious and virtuous parents, Anselm Croese and Antonia M. Garza, and at the sacred font, he received the name John. From his earliest years, inclined towards virtue, and as soon as he acquired the light of reason, he was entrusted to the care of the local parish priest. Growing in stature and devoted to the care of the flock, he did not waste time or effort. For, partly through prayer, partly through imparting the rudiments of the faith and moral precepts to his companions, and by kindling piety in them, he seemed to be an apostle. He used to attend the sacrifice of the Mass daily with them, before leading the flock to pasture; and fleeing youthful vanities, and intent on holy conversation and meditation, he progressed so much in spirit that he began to consider entering into a life of greater perfection. Having made his vows, he was received as a tertiary in the Convent of the Third Order among the Conventual Brothers; and there he remained for two years, during which time he perceived that he was being drawn towards a more austere life; especially when he saw a Capuchin novice praying with such piety. From the Conventuals, the Servant of God made his way to the Capuchins, and first he put on the habit of the Vulturii tertiary group, and then he was sent to Genoa, where he completed his novitiate in the Convent of St. Barnabas. There, having relinquished his baptismal name, he was called Francis, and in December of the year 1826, he made his solemn vows. Not long after, he was transferred by obedience to another convent, called the one dedicated to the Immaculate Conception, and there he remained until the end of his life. The duties that are usually assigned to the working brothers, Francis performed with a diligent and careful spirit; and after seven years of proven

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service in domestic duties, he was assigned another external task, which was to collect alms for the convent and for the convent's infirmary. A wider field was then opened to him to exercise many virtues, and especially charity and zeal for his neighbor. For in this humble and laborious ministry, he sometimes suffered insults, even stones, but he bore everything for Christ with joy. When alms were offered, he would thank God with a hundredfold blessing. Loving poverty, he often took a boy with him to receive the money, so that he would not have to touch it himself. These and other things are reported by the Servant of God in the Ordinary Process, from which it is also evident that his prayer was constant, that he frequently received the sacraments, and that he had a singular devotion to the Virgin Mary and to the patron saints, Francis of Assisi and Anthony of Padua, to whom, as has been ascertained, he also brought help to the needy, at his own request. In the beginning of the year 1866, in order that the terrible plague which was ravaging those parts might be driven away, he offered himself as a sacrifice to God through St. Francis; and it is said that the Servant of God foretold the day of his death on several occasions. Meanwhile, he went to the Shrine of the Blessed Virgin Mary, which is located in Vulturii, and offered himself at one altar, called "from the Holy Water," and at another, called "from the Graces." Returning to Genoa, where he was already suffering from a weak and worn-out constitution, he began to fall more seriously ill, and he received the sacraments of the dying with holiness. Finally, after begging forgiveness from the Brothers who were standing by and weeping, he was taken, as it were, in a serene sleep, into the embrace of the Lord.

[*Latin ed. p. 192*]

192 FROM the Sacred Rites and his life, he passed away on the Feast of the Imprint of the Holy Stigmata of Saint Francis, September 17th of the same year. The body of the Servant of God was duly prepared and laid to rest in the cemetery, which bears a name given to it by the people of Stalia, and was then, with piety and expense provided by the citizens of Genoa, transferred from the common burial ground to a marble monument, erected in their honor. Furthermore, as the reputation of this humble lay professed grew more and more, an Ordinary Inquisition was instituted in the Ecclesiastical Court of Genoa concerning him, and presented to the Congregation of Sacred Rites. At the urging of the Most Reverend Lord Bernard M. Nardi, Bishop of Thebes, and General Postulator of the Order of Friars Minor of Saint Francis of Assisi, the Most Holy Pope Leo XIII, after the decision of the Sacred Congregation concerning the revision of the writings of the Servant of God had been approved, graciously granted, on February 11, 1895, the following decrees of June 15, 1895, and June 8, 1896, that the question of introducing the cause of the aforementioned Servant of God, before the prescribed ten-year period, be proposed in the ordinary session of the Congregation, without the intervention or vote of

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the Consultors. Therefore, in response to the repeated prayers of the aforementioned Postulator, and after considering the letters of petition from numerous Most Reverend Archbishops, Bishops, Abbots, and Chapters, His Eminence and Most Reverend Lord Cardinal Camillus Mazzella, Relator of this Cause, in the ordinary meeting of the Congregation of Sacred Rites, held on the date indicated, in the Vatican, proposed the following question for discussion: "Should a Commission for the Introduction of the Cause be appointed in this case, and for this purpose?" And the Sacred Congregation itself, after mature deliberation and after hearing the Reverend Father Gustavo Persiani, serving as Promoter of the Holy Faith, decided to respond: "Affirmatively, that is, a Commission should be appointed, if it pleases the Most Holy Pope." On July 28, 1896. All of which was reported to the Most Holy Pope Leo XIII by the undersigned Cardinal Prefect of the Congregation of Sacred Rites, and His Holiness, approving the response of the Sacred Congregation, deigned to sign with his own hand the commission for the introduction of the cause of the aforementioned Venerable Servant of God, Francis of Camporubeo, on August 9th of the same year.

C. CARD. ALOISI-MASELLA, & R. C. Prefect.

L. * S. A. TRIPBPI, S. R. C. Secretary.

[*Latin ed. p. 193*]

193 APOSTOLIC LETTERS from His Holiness Pope Leo XIII, concerning the Anglican Orders. With pastoral care and charity, as befits the Good Shepherd, our Lord Jesus Christ (1), we strive to fulfill our office and to imitate Him, and, aspiring to His grace, we devote a not insignificant portion of our efforts to the noble English nation. A prime witness to Our will is the letter which We sent last year to the English, seeking the unity of Christendom in faith: in it, We recalled the ancient connection of that people with the Mother Church, and We strive to bring about a blessed reconciliation, inspiring in their hearts a desire to pray to God. And not long ago, when it seemed fitting to discuss the unity of the Church more broadly with all, We considered England, hoping that Our words might bring both strength to Catholics and a salutary light to those who are separated. And We must acknowledge that the English, with their concern for humanity and for the salvation of many, have received Our appeal and the freedom of speech with great kindness, and that this has not been achieved through any impulse of human reason. Now, however, We have resolved to devote Our efforts to a matter of no less importance, which is closely connected with this very matter and with Our wishes. For it is known that, shortly after the English separated from the center of Christian unity, a new rite for conferring the sacred orders was publicly introduced in England, under King Edward VI; and it has long been the common opinion that this rite does not truly confer the sacrament of Holy Orders, as instituted by Christ, nor does it maintain the hierarchical succession.

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This opinion has been confirmed not only by the acts of the Church and its constant discipline, but also by recent controversies, especially in these last years, concerning whether the sacred orders conferred by the Edwardian rite are truly sacraments and have the intended effect; some, both English and a few Catholics, have affirmed or doubted this. Some are moved by the excellence of the Christian priesthood, wishing that those who receive it should not be deprived of its twofold power in the Body of Christ; others are motivated by the desire to bring about some kind of return to unity; and it seemed to both that this was already being pursued in studies of this kind. (1) Hebrews x, 20. Acts, Vol. XXIX, page CCCXL, 13.

[*Latin ed. p. 194*]

194. Apostolic Letters, addressed to the aged, and new documents rescued from oblivion, it would not be inopportune to retract, by Our authority. But We, not neglecting these considerations and desires, and most obedient to the voice of apostolic charity, have judged that nothing should be left untried which might in any way contribute to averting damage to souls or promoting their welfare. Therefore, it has seemed fitting to grant a most gracious indulgence regarding the retraction of the cause; so that, through the utmost diligence of a new investigation, all future doubt might be removed. Wherefore, We entrusted the matter to a certain number of men distinguished by learning and erudition, among whom diverse opinions on the cause had been ascertained, and We ordered them to commit the substance of their opinions to writing. Then, having summoned them to Us, We ordered them to communicate their writings with each other, and to investigate and expound whatever else might be deemed useful to the matter. Furthermore, We decreed that they should, with all possible diligence, examine the appropriate documents in the Vatican archives, whether already known or yet to be discovered; and also that they should have readily available all acts of the same kind preserved in the Sacred Council, which is called Supreme. Equipped with these aids, We wished them to convene in separate sessions; twelve such sessions were held, presided over by one of the Cardinals of the Holy Roman Church designated by Us, with each member having the freedom to speak. Finally, We ordered that the acts of these sessions, together with other documents, should be presented to Our Venerable Brothers, the Cardinals of the same Council; who, after meditating on the matter, and then discussing it before Us, should express their individual opinions. Having followed this procedure, it was fitting to approach a thorough examination of the cause, but not before it had been carefully investigated, so that it might be determined in which place it now stood according to the prescriptions of the Apostolic See and the established custom; and it was certainly important to consider the origins and force of that custom. Therefore, in the first place, the principal documents were examined by which Our Predecessors, at the request of Queen Mary,

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offered special efforts for the reconciliation of the English Church. For Pope Julius III appointed Cardinal Reginald Pole, a man of English nationality, distinguished by manifold merit, as his legate for this purpose, as if an angel of peace and love, and entrusted him with powers and faculties to act outside the ordinary rules and regulations.

[*Latin ed. p. 195*]

APOSTOLIC LETTERS 195 were transmitted (1); which were subsequently confirmed and declared by Paul IV. In order that it may be correctly understood what weight these documents actually hold, it is necessary to establish, as a foundation, that their purpose was by no means abstract, but entirely inherent and specific to the matter at hand. For, since the powers granted to the Apostolic Legate by the Pontiffs concerned solely England and the state of religion therein; and since the instructions for action imparted by the same to the Legate were in no way intended to be generally applicable, without which the sacred ordinations would be invalid, but rather were to pertain specifically to providing for the sacred orders in that kingdom, as the times and the conditions of things demanded. This itself, besides being clear from the nature and manner of the documents themselves, also demonstrates that it would have been entirely foreign to the purpose to give the Legate detailed instructions regarding those things which are necessary for the completion of the Sacrament of Holy Orders, especially considering that he was a man whose doctrine had shone forth even in the Council of Trent. If these points are carefully considered, it will readily become clear why, in the letters of Julius III to the Apostolic Legate, dated March 8, 1554, there is a distinct mention first of those who had been legitimately and lawfully promoted, and were to be retained in their orders; and then of those who had not been promoted to the sacred orders, but who, if found worthy and suitable, could be promoted. For it is certainly and definitively noted, as was indeed the case, that there were two classes of people: namely, those who had truly received the sacrament of ordination, either before the secession of Henry, or, if after that, even through ministers who were mistaken or in disagreement, but nonetheless according to the usual Catholic rite; and then others who had been initiated according to the Edwardian Ordinal, and who, for that reason, could be promoted, because they had received an invalid ordination. Indeed, nothing else could have been the intention of the Pontiff, as is clearly confirmed by the letter of the same Legate, dated January 29, 1555, in which he requests his powers from the Bishop of Norwich. Furthermore, it must be considered above all that these very letters of Julius III speak of the free use of pontifical powers, even for the benefit of those to whom the ministry of consecration had been administered, albeit less properly and without observing the usual form of the Church: by which words, they certainly meant those who had

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been consecrated according to the Edwardian rite; for at that time, there was no other form in England. (1) This was done in the month of August, 1553, by letters under the seal, at the time of the death of Edward and other events. If ever...

[*Latin ed. p. 196*]

196 APOSTOLIC LETTERS: These matters will become clearer when we recall the embassy which King Philip and Queen Mary, at the urging of Cardinal Pole, sent from Rome to the Pope in February of the year 1555. The royal envoys, three most distinguished men endowed with every virtue, among whom was Thomas Thirlby, Bishop of Ely, had the following purpose: to inform the Pope more fully about the state of religious affairs in that kingdom, and to request, above all, that he ratify and confirm those things which the Legate had arranged and accomplished for the reconciliation of that kingdom with the Church. For this purpose, all the necessary written testimonies were presented to the Pope, as well as the relevant parts of the new Ordinal. Indeed, Pope Paul IV, having received this embassy with great favor, and after carefully discussing the testimonies with several Cardinals, and after mature deliberation, granted the "Preclara carissimi" bull on June 20th of the same year. In these documents, in which full approval and added strength are given to the actions of the Legate, the following is prescribed concerning ordinations: "...those who have been promoted to the ecclesiastical orders... from a source other than a bishop duly and properly ordained, must receive those same orders... anew." As for who were such bishops, not duly and properly ordained, the preceding documents and the powers granted to the Legate for that purpose already indicated: namely, those who were promoted to the episcopate, as others were to other orders, not observing the customary form of the Church, or not observing the form and intention of the Church, as the Legate himself wrote to the Bishop of Norwich. These, indeed, were none other than those who were promoted according to the new ritual form; to whom Cardinals were also chosen to give careful attention to the examination. Nor should we overlook a passage from the same papal letters, entirely appropriate to the matter; where, along with others in need of a dispensation, are listed those who had not at all and in fact obtained either those orders or ecclesiastical benefices. For to have obtained orders not at all is the same as to have obtained them through an invalid act and with no effect, namely, invalidly, as the very wording and usage of the language indicate; especially since the same is affirmed of orders as of ecclesiastical benefices, which manifestly were none, because they were conferred with a vitiating defect. Furthermore, since some were uncertain as to whether certain bishops could truly be said and considered to be duly and properly ordained according to the Pope's intention, he, not long afterward, on October XXX, added other

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letters in the form of a Brief:

[*Latin ed. p. 197*]

APOSTOLIC LETTERS 197. And We, wishing to remove such hesitation, and to promote the serenity of conscience of those who, during the schism, had been promoted to the orders, and desiring to express more clearly the mind and intention which We had in those same letters, declare that only those bishops and archbishops who were not ordained and consecrated according to the form of the Church can be rightly and lawfully considered ordained. This declaration, unless it was specifically intended for the present situation in England, that is, for the Edwardian Ordinal, certainly did nothing to remove the hesitation or to promote the serenity of conscience. Furthermore, the documents and mandates of the Apostolic See were understood by the Legate in this way, and he obeyed them duly and piously: and this was also done by Queen Mary and by others who worked with her to restore religion and Catholic institutions to their former place. The authorities which We have cited from Julius III and Paul IV clearly show the origins of that discipline which, with constant tenor, has been maintained for more than three centuries, so that ordinations performed according to the Edwardian rite are considered null and void, and this discipline is abundantly supported by numerous testimonies of those very ordinations which, even in this city, have been repeatedly and absolutely performed according to the Catholic rite. — Therefore, there is a reason to insist on the observance of this discipline. For if anyone should have any doubt as to how the pronouncements of the Pontiffs should be understood, it is rightly said: Custom is the best interpreter of the laws. For it has always remained established and true in the Church that it is a sacrilege to deny that the sacrament of Orders can be conferred, and it could never have happened that the Apostolic See would tolerate such a custom. But not only did it not tolerate it, but it also approved and sanctioned it, whenever a particular case arose in the same matter that needed to be judged. We present two such cases, out of many that have been brought to the Supreme Court: one, in the year 1684, of a certain Calvinist Frenchman; the other, in the year 1704, of John Clement Gordon; both of whom received their orders according to the Edwardian rite. In the first case, after a careful investigation of the matter, many consultants issued their written opinions, which are called votes, and the others agreed with them in one judgment, regarding the invalidity of the ordination: but only with regard to the matter of opportunity, it was decided to respond to the Cardinals, *dilata*. The same proceedings were repeated and weighed.

[*Latin ed. p. 198*]

198 APOSTOLIC LETTERS concerning the second matter: Furthermore, new opinions were sought from the consultants, and distinguished doctors

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from the Sorbonne and Douai were consulted, and no aspect of insightful prudence was overlooked in order to thoroughly investigate the matter. And it should be noted that, although both Gordon himself, whose responsibility it was, and some of the consultants, in defending the claim of nullity, had presented that alleged ordination of Parker, nevertheless, that cause was entirely set aside in the judgment rendered, as the documents demonstrate, and no other reason was considered except the defect of form and intention. In order that the judgment concerning the form might be more certain, it was ensured that a copy of the Anglican Ordinal was available; and also, forms of ordination were presented, collected from various Eastern and Western rites. Then, Clement XI, with the consent of the Cardinals to whom it pertained, himself on Friday, April 17, 1704, decreed: "John Clemens Gordon is to be ordained completely and absolutely in all orders, even the sacred orders, and especially the priesthood, and since he has not been confirmed, he shall first receive the sacrament of Confirmation." It is, of course, important to consider that this judgment did not derive from any defect in the tradition of instruments: for at that time, it was the custom that ordination should be restored under a condition. Rather, it is more important to consider that this judgment of the Pope applies universally to all Anglican ordinations. Although the matter concerned a particular case, it did not arise from any particular reason, but from a defect of form, by which defect those ordinations are equally affected: so that whenever a similar matter had to be decided afterwards, the same decree of Clement XI was communicated. Since this is the case, no one can deny that the judgment of the Apostolic See on this matter was defined long ago, and that, perhaps, because those documents were not sufficiently known when the time came, some Catholic writers might not hesitate to freely discuss it. However, as we stated at the beginning, nothing is more desirable to us than to be of the greatest possible help and charity to well-intentioned people; therefore, we order that the Anglican Ordinal, which is the foundation of the entire case, be carefully examined again. In the rite of performing and administering any sacrament, a distinction is made between the ceremonial part and the essential part.

[*Latin ed. p. 199*]

APOSTOLIC LETTERS 199, which are commonly called the matter and form. And all know that the sacraments of the new law, being visible signs and the efficacious power of an invisible grace, must signify and effect the grace which they signify. This signification, although it must be present in the entire essential rite, namely in the matter and the form, pertains especially to the form; since the matter is a part that is, by itself, not determinate, but is determined by it. And this is more clearly evident in the sacrament of Holy Orders, whose matter, as far as it is considered in this place, is the imposition of hands; which, by itself, signifies nothing definite, and

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is equally used for certain Orders, as well as for Confirmation. Now, the words which, until recently, have been used by Anglicans as the proper form of priestly ordination, namely, "Accipe Spiritum Sanctum," do not, in fact, definitively signify the order of the priesthood, nor the grace, and the power, which is especially the power to consecrate and to offer the true Body and Blood of the Lord (1), in that sacrifice which is not a bare commemoration of the sacrifice accomplished on the Cross (2). This form was subsequently augmented by words pertaining to the office and work of the priest: but this rather demonstrates that the Anglicans themselves saw that the original form was lacking and unsuitable for the thing. Moreover, even if this addition could, perhaps, impart a legitimate signification to the form, it was introduced later, after a century had passed since the adoption of the Edwardian Ordinal: and therefore, since the hierarchy was extinct, there was no power to ordain. Furthermore, nothing of benefit to the cause has been added by other prayers in the same Ordinal. For, setting aside the other things which demonstrate that they are less sufficient in the Anglican rite, this one argument is sufficient: that deliberately, whatever clearly designates the dignity and the offices of the priesthood in the Catholic rite, has been removed. Therefore, that form cannot be suitable and sufficient for the sacrament, which, in fact, omits what it ought properly to signify. The same is true of the episcopal consecration. For, not only were the words pertaining to the office and work of the bishop added later to the formula, "Accipe Spiritum Sanctum," but also, as we shall soon say, judgment must be made about them differently than in the Catholic rite. It profits nothing to have invoked the preface prayer "Omnipotens" (1) Trid. Sess. xxm, de sacr. Ora., can. 1. (2) Trid. Sess. xxn, de sacrif. Missae, can. 5.

[*Latin ed. p. 200*]

200 APOSTOLIC LETTERS: God, because they have been equally diminished by words that declare the highest priesthood. Indeed, it is irrelevant to investigate whether the episcopate is a complement to the priesthood, or an order distinct from it; or whether it is conferred, as they say, by a leap, that is, upon a man and not a priest, and whether it has any effect or not. But, undoubtedly, according to the institution of Christ, it truly belongs to the sacrament of Orders, and is a pre-eminent degree of the priesthood; which, indeed, both the voice of the holy Fathers and our ritual custom call the highest priesthood, the highest of sacred ministrations. Therefore, since the sacrament of Orders and the true priesthood of Christ have been completely expelled by the Anglican rite, and therefore in the episcopal consecration of that rite, no priesthood is conferred in any way, nor can the episcopate itself truly and lawfully be conferred: and this is all the more so because the primary duties of the episcopate are to ordain ministers into the Holy Eucharist and to offer the sacrifice. For a correct, true, and complete understanding of the Anglican Ordinal, beyond what has been

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noted in some of its parts, nothing is more important than to carefully consider by what things it was established and publicly instituted. It is too long to pursue each detail, nor is it necessary: the memory of that age speaks clearly enough, of whose minds were the authors of the Ordinal, whom they have joined as supporters from heterodox sects, to whom, in turn, they refer their plans. For they are far too aware of the necessity that exists between faith and worship, between the law of believing and the law of worship, and they have distorted the order of the liturgy, indeed, in many ways, to the detriment of its original form, in order to restore its original form. Therefore, in the entire Ordinal, there is not only no open mention of sacrifice, consecration, priesthood, and the power to consecrate and offer sacrifice; but rather, all traces of such things, which might remain in the prayers of the Catholic rite, have been removed and deleted, as we have mentioned above. Thus, the inherent nature and spirit of the Ordinal are clearly apparent. From this original defect, if it could not be useful for the purpose of ordinations, it was inevitable that, as long as it remained as it was, it would not be able to be useful over the course of the ages. And those who, from the time of Charles I, have tried to introduce something of sacrifice and priesthood, with some additions later made to the Ordinal, have labored in vain: and likewise, a not insignificant part of Anglicans, recently united, have labored in vain, who believe that the same Ordinal can be restored to health.

[*Latin ed. p. 201*]

The APOSTOLIC LETTERS [LITTERAE] number 201, and from this, the aforementioned opinion can be understood and deduced. We say that the efforts of this kind have been, and are, vain; and this also for the reason that, if indeed some words are used in the Anglican Ordinal, as it now exists, which seem ambiguous, they nevertheless cannot take on the meaning they have in the Catholic rite. For, as we have seen, once the rite has been altered, in which indeed the Sacrament of Orders is denied or adulterated, and from which every notion of consecration and sacrifice is repudiated, then it is by no means certain that the formula, "Receive the Holy Spirit," which Spirit, along with the grace of the Sacrament, is infused into the soul, and that the words relating to the office and work of a priest or bishop, and similar things, which remain, are anything more than empty words, instituted by Christ. Many Anglicans, interpreters of the Ordinal, themselves perceive the force of this argument; which is not dissimulated by those who, interpreting it in a new way, do not attain to the true value and virtue of the Orders conferred, but rely on a vain hope. Furthermore, by the same argument, it also collapses for those who believe that the prayer, "Almighty God, giver of all good things," which is at the beginning of the ritual action, can suffice for a legitimate form of Orders; even if it might perhaps be considered sufficient in some Catholic rite approved by the Church.

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With this, therefore, is joined a defect of intention, which is equally necessary for a Sacrament to be valid. The Church does not judge concerning the mind or intention, insofar as it is something internal; but insofar as it is manifested externally, she must judge concerning it. Indeed, when someone has seriously and properly applied the due matter and form for the completion and conferral of a Sacrament, he is considered by that very act to intend to do what the Church intends. On this principle, of course, rests the doctrine that holds that something is truly a Sacrament, even if it is conferred by the ministry of a heretic or one who is not baptized, provided that it is done according to the Catholic rite. On the contrary, if the rite is changed, manifestly with the intention of introducing something not received by the Church, and of repelling that which the Church does, and which, by the institution of Christ, belongs to the nature of the Sacrament, then it is clear that not only is the necessary intention lacking for the Sacrament, but rather, there is actually an intention contrary to the Sacrament, and repugnant to it.

We have considered all of these things for a long time, and with our Venerable Brothers in the Supreme Tribunal; and we also wished to summon the entire group before Us on the fifth day of July next, in commemoration of the Blessed Virgin Mary.

[*Latin ed. p. 202*]

202 APOSTOLIC LETTERS of the Carmelites. And they were all of one mind, that the cause proposed had long ago been fully known and judged by the Apostolic See; and that, by again instituting and examining the matter, a more illustrious outcome had emerged, inasmuch as justice and wisdom had fully resolved the entire affair. However, we deemed it best to supersede the previous judgment, so that we might better understand and, with our authority, declare the same matter anew, and that we might earnestly implore a more abundant supply of divine light. — Then, considering that the same head of discipline, although already defined by law, had been brought into controversy by some, whatever the cause for its being brought into question; and that it would be likely that a pernicious error would be generated among those who would think that they could find the sacrament and the fruits of the Order there where they are not at all, it seemed fitting to issue our judgment in the Lord. Therefore, fully agreeing with and confirming, as it were, all the decrees of our predecessors in this very cause, and renewing them with our authority, with certain knowledge, we pronounce and declare that the ordinations performed according to the Anglican rite are utterly null and void, and entirely without effect. It remains only that, having entered under the great name of the Pastor, and with a sincere desire to demonstrate the certainty of this weighty matter, we exhort those who seek and desire the benefits of the Orders and Hierarchy with a sincere will. Perhaps, even now, those

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who, intent on the fervor of Christian virtue, consult divine writings with piety, and offer devout prayers, still hesitate and are anxious, although they have long been deeply admonished by the voice of Christ. They should now clearly see whither that good man invites them, and what he desires. If they return to his one fold, then truly they will obtain the benefits they seek, and the safeguards of salvation, which He Himself has provided for the Church, as a perpetual and lasting guardian and procurator in the nations. Then truly they will drink with joy from the fountains of the Savior, from His wondrous sacraments: through which faithful souls are restored to friendship with God, and, with their sins remitted, are nourished and strengthened with heavenly bread, and receive the greatest aids for attaining eternal life. May God grant that those who truly thirst for these things may find them. May God, the source of all consolation, make them partakers and fill them abundantly with His goodness. — We wish that our exhortation and our wishes may be heeded with greater attention by those who are ministers of religion in their communities. These men, leading by example through their office, with doctrine and authority, will certainly...

[*Latin ed. p. 203*]

APOSTOLIC LETTERS 203: It is pleasing to divine glory and the salvation of souls that some, with eagerness, may obey the call of God, and give a shining example of themselves. Indeed, the Mother Church will receive them with singular joy, embracing them with all goodness and providence, those whom virtue of spirit, strengthened by arduous difficulties, has brought back into her bosom. From this virtue, scarcely can praise remain silent among the assemblies of brothers throughout the Catholic world; praise which, before Christ the Judge, will be hope and confidence, and from which He will bestow rewards in the heavenly kingdom! We, for our part, will never cease to foster their reconciliation with the Church, from which both individuals and orders, which is what we greatly desire, can greatly benefit in order to imitate [her]. Meanwhile, we earnestly beseech and implore all to strive faithfully to promote the open course of divine truth and grace, through the bowels of the mercy of our God. Furthermore, these present letters, and everything contained within them, must never, at any time, be marked or impugned by any flaw of deceit or fraud, or by any other defect; but we decree that they must always be valid and remain in their full force, and that they must be inviolably observed by all, of whatever rank and standing, both in judgment and outside of it, declaring that anything to the contrary shall be null and void. We wish that these letters, even in printed form, should have the same validity as if they were written by hand, signed by the Notary, and sealed with the seal of a man of established standing in ecclesiastical dignity, as if they were a manifestation of our will. Given at Rome, at Saint Peter's, in the year of

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the Incarnation of the Lord, one thousand eight hundred and ninety-six, on the Kalends of September, in the nineteenth year of Our Pontificate.

A. CARD. C. CARD. BIANCHI

Pro-Datarius

DE RUGGIERO.

VISA DE CURIA

I. DE Loco
$i Plumbi Reg. in AQVILA
Secret.

E VICECOMITIB vs

Brevium.

I. CUGNONI

[*Latin ed. p. 204*]

204. ENCYCLICAL LETTER of His Holiness Pope Leo XIII, concerning the Most Holy Rosary. Having always fostered and increased, throughout our life, a faithful and pious devotion to the most blessed Virgin, we have often, in our Supreme Pontificate, had the opportunity to express this more openly. Aware of the calamitous times for the Christian religion and for the people themselves, we have understood how important it is to provide, to commend, and indeed to promote that safeguard of salvation and peace which the most benign God has bestowed upon the human race through its most august Mother, a constant and shining emblem in the annals of the Church. Our exhortations and wishes have met with a widespread response from many Catholic nations, especially through the sacred Rosary: and the desired fruits have not been lacking. Yet, we can never sufficiently celebrate the divine Mother, who is truly worthy of all praise, and in commending the study of love for her, who is full of mercy and grace, to men. Moreover, the spirit, weary from apostolic labors, feels the time of its departure drawing near, and with greater confidence it turns to her, from whom, as from a blessed dawn, the days of unfading joy and prosperity have arisen.

What is pleasing to remember is that, in letters sent to you at different times, we have praised the prayer of the Rosary, because it is fitting in many ways for Him to whom it is offered, and because it is useful to those who

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use it properly. It is equally pleasing to be able now to reiterate and confirm this intention. From this, a splendid opportunity arises to exhort minds and hearts to increase in religion, and to awaken in them the hope of immortal rewards. The form of prayer, of which we speak, is properly associated with the Rosary, as if the sweetness and beauty of roses were imitated in the arrangement of its beads. Indeed, as is fitting for the devotion to the Virgin, who is rightly called the mystical Rose of Paradise, and who, with a shining crown, reigns as Queen of all, so the very name seems to foreshadow the joys and heavenly delights offered to her cultivators.

This is clearly evident if one considers the meaning of the Most Holy Rosary. For there is nothing that the precepts and examples of our Lord Jesus Christ and the Apostles more strongly urge than the duty of invoking God and praying. Furthermore, the Fathers and Doctors have agreed...

[*Latin ed. p. 205*]

It is of such necessity that those who neglect it vainly hope to attain eternal salvation. For, while access is open to every one who prays, both by the very nature of the thing and by the promise of Christ, prayer derives its greatest efficacy, as all know, from two things above all others: if it is persevering and constant, and if the prayers of many are united into one. The other is clearly demonstrated by the full invitations of Christ: "Ask, and it shall be given you; seek, and you shall find; knock, and it shall be opened to you" (1); plainly, in imitation of the best of fathers, who not only grants what his children desire, but also rejoices that they ask Him for a long time, and as it were, tire Him with their prayers, so that He may draw their hearts more closely to Himself. Of the former, the Lord Himself has testified not once, but many times: "If two of you on earth agree on anything they ask, it will be done for them by My Father; for where two or three are gathered together in My name, there I am in the midst of them" (2). From which, Tertullian aptly said: "Come together in a group and assembly, so that, as it were, with a hand, we may approach God; this is pleasing to God" (3); and it is worthy of remembrance that Aquinas wrote: "It is impossible that the prayers of many should not be heard, if from many prayers there is made as it were one" (4). Both of these recommendations are excellently fulfilled in the Rosary. For in it, without pursuing many things, we strive to implore the Kingdom of grace and glory from our Heavenly Father by repeating the same prayers; and we also repeatedly beseech the Virgin Mother that she may deign to help those who are subject to faults, both in all of life, and especially at the hour of death, which is the gateway to eternity. Furthermore, the formula of the Rosary is excellently suited for communal prayer; hence, it is not without reason that it has also obtained the name of the Marian Psalter. And it is a custom that must be religiously preserved or restored, which prevailed among the fathers, when Christian families, both in cities and

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in the countryside, considered it a sacred duty that, at the end of the day, after ceasing from the heat of their labors, they would duly gather before the image of the Virgin, and complete the recitation of the Rosary with alternating prayers. And this faithful and concordant observance greatly pleased her, so that she was present with them just as a good mother is with her children, bestowing the gifts of domestic peace, as it were, a foretaste of heavenly peace. — Considering the virtue of this communal prayer, among those things that have often been pleasing about the Rosary (1) Matthew 7:7. (2) Matthew 18:19, 20. (3) Apology, chapter 39. (4) On the Gospel of Matthew, chapter 18.

[*Latin ed. p. 206*]

206 ENCYCLICAL LETTER: Furthermore, We have decreed that, "It is Our will that the Rosary, in the dioceses, be recited daily in the principal church, and on festive days in the curial churches (1)." This, however, should be done constantly and diligently; and We are pleased to see that it is being carried out and spread in other public acts of piety, and in processions of pilgrims to more important churches, whose increasing frequency is to be commended.

Moreover, the association of Marian praises and prayers has something pleasing and salutary for souls. And We ourselves felt this most keenly, and Our mind recalls, when during certain times of Our Pontificate We were present in the basilica of the Vatican, surrounded by a vast number of all orders, who together with Us, in spirit, voice, and confidence, supplicated fervently to the most present Helper of the Catholic name, through the mysteries of the Rosary and prayers. Who, indeed, would dare to doubt or criticize the great faith placed in the protection and help of the Virgin? Certainly, the name and attributes of the perfect Mediator belong to no one but Christ, for He alone, being both God and man, restores the human race to the Father in grace: "For there is one God, and one mediator between God and men, the man Christ Jesus, who gave himself as a ransom for all" (2). But, as the Angelic Doctor teaches, if anything prevents, then, according to what, other beings may be mediators between God and men, insofar as they cooperate in bringing man to union with God, dispositively and ministerially (3), such as the angels and the blessed in heaven, the prophets, and the priests of both Testaments; certainly, the glory of the most exalted Virgin is all the more fitting. For no one can be thought of who has ever offered or will ever offer such service in reconciling God and men. Indeed, She brought the Savior to those who were rushing to eternal ruin, even then, when She, in the place of all human nature (4), received with admirable assent the message of the peaceful sacraments, brought from heaven by the Angel; She is the one from whom Jesus was born, truly His Mother, and for this reason, worthy and deserving of the Mediator, as Mediator.

When the mysteries of these things are recalled and contemplated in

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the order of the Rosary, let them be simultaneously (1) Apostolic Letter *Salutaris ille*, dated December 24, 1883. (2) 1 Timothy 2:5, 6. (3) *Summa Theologica*, III, q. XXVI, a. 1. (4) *Summa Theologica*, S. III, III, q. XXX, a. I.

[*Latin ed. p. 207*]

The merits of Mary shine forth in this Encyclical, concerning our reconciliation and salvation. And no one can fail to be most sweetly moved whenever he considers her, whether she appears in the house of Elizabeth, dispensing divine graces, or whether she presents the Infant to the shepherds, to the kings, to Simeon. And what, indeed, when we consider that Christ, for our sake, poured forth His blood, and that the members in which He received wounds from the Father, are the price of our freedom, can these be anything other than the flesh and blood of the Virgin? For the flesh of Jesus is the flesh of Mary; and although the glory of the Resurrection has been magnified, yet it remains the same flesh which was taken from Mary (1). But another notable fruit follows from the Rosary, one entirely connected with the passage of time. Of this, We have mentioned elsewhere. For it is this: that when the power of divine faith is daily subjected to many dangers and trials, it greatly helps the Christian to nourish and strengthen it. Christ is called the Author and Consummator of faith by divine words (2): Author, because He Himself taught men many things to believe, especially concerning Himself, in whom dwells the fullness of the Godhead (3), and He benignly grants, through grace and as it were, the unction of the Holy Spirit, so that they may believe; Consummator, because He Himself reveals in heaven the things perceived by them under the veil in this mortal life, where He will transform the habit of faith into the splendor of glory. Truly, Christ shines forth clearly in the institution of the Rosary; through meditating on His life, we behold it, both His private life in joys, and His public life, amidst the greatest labors and sorrows leading to death, and finally, His glorious life, which, from the Resurrection of the triumphant One seated at the right hand of the Father, is extended into eternity. And since faith, in order to be full and worthy, must be professed, for it is believed with the heart for justice, but is confessed with the mouth for salvation (4); therefore, we also have from the Rosary the best means for this. For through those very words which are woven into the vocal prayers, we can express and profess our faith in God, our provident Father, in the life of the age to come, in the remission of sins; also in the mysteries of the Trinity, of the Word made flesh, of divine motherhood, and others. You know, however, how precious (1) De (tssumpt B (2) Heb. x n , 2. (o) Col. n, 9. (4) Rom. x, 10. M. V. c. v. inter op. S, Aug.

[*Latin ed. p. 208*]

208 ENCYCLICAL LETTER, and deserving of faith. For faith is like the

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most excellent seed, from which all virtues bloom in the present, by which we are proven to God, and then bear fruit that will remain forever: "For to know you is perfect justice, and to know your justice and your virtue is the root of immortality" (1). — Let us add this, pertaining to the duties of the virtues which faith rightfully demands. Among these is the virtue of penance, and its part is also abstinence, which is both necessary and salutary. In this regard, the Church has become increasingly merciful towards her children, but let them see that they must apply all diligence so that they may compensate for the maternal indulgence with their own works. It is also fitting to propose the use of the Rosary for this very purpose, which can also produce excellent fruits of penance, especially through the remembrance of the sorrows of Christ and the Mother. Therefore, striving for the highest good, it is certainly by a provident hand that this aid of the Rosary has been presented, and it is so readily available to all and so convenient that nothing could be more so. Anyone who is even moderately instructed in religion can easily and profitably use it; nor is it a matter of such length that it would delay anyone's affairs. The sacred annals abound with opportune and clear examples: and it is well known that many have always maintained this custom of piety, even while bearing the weight of heavier duties, or occupied with laborious cares. — With this in mind, it harmonizes sweetly with the deepest sense of religion that the soul should hold the sacred Rosary, as a faithful companion of life and a sure safeguard; and that, embracing it in the supreme struggle, they may hold a sweet hope for the imperishable crown of glory. The benefits of sacred indulgences greatly favor this, if they are held and used as they are worthy: for the institution of the Rosary has been greatly increased by Our Predecessors and by Ourselves. And these certainly will be very beneficial to the dying and the deceased, as if imparted by the merciful hand of the Virgin, so that they may more quickly enjoy the solace of eternal peace and light. These things, Venerable Brothers, move Us to ceaselessly praise and commend this excellent and so useful form of piety to the Catholic peoples, so that they may attain the port of salvation. But another very serious reason also suggests this, concerning which (1) Wisdom 15:3.

[*Latin ed. p. 209*]

ENCYCLICAL LETTER 209. We have often, in letters and in addresses, made known our sentiments. Indeed, since We are daily and more urgently impelled to action by that desire which We conceived from the Divine Heart of Christ, namely, to foster the reconciliation of the dissenting, We understand that this most excellent unity can be prepared and strengthened by no means better than by the power of holy prayers. The example of Christ is presented to us, who, that His disciples might be one in faith and charity, begged with fervent supplication from the Father. And the powerful intercession of His most holy Mother in this regard is a shining

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example in the history of the Church. In it is commemorated the first assembly of the Disciples, eagerly awaiting the promised abundance of the Holy Spirit; and the presence of Mary is particularly noted: "These all were with one accord, continuing in prayer with the women, and Mary the mother of Jesus" (1). Therefore, just as the Church, in its nascent state, rightly joined itself in prayer to her, as to the most excellent advocate and guardian of unity, so too it is highly fitting that this should be done in these times throughout the Catholic world; especially during the month of October, which We have long dedicated to the Divine Mother, for the purpose of imploring her aid in these afflicted times of the Church, through the sacred and solemn rite of the Rosary. Therefore, let the devotion to such prayers flourish everywhere, for the sake of the primary purpose of holy unity. For nothing could be more pleasing and acceptable to Mary, who, being most closely united with Christ, most ardently desires and wills that those who are baptized into the same Body, may all, with the same faith and perfect charity, cohere with Him and with one another. May the mysteries of the same faith penetrate the minds more deeply through the devotion to the Rosary, with this most blessed result that we may imitate what it contains and attain what it promises. In the meantime, as a pledge of the divine benefits and of Our paternal charity, We impart to each of you, to the clergy and to the people, Our Apostolic blessing. Given at Rome, near the Holy Peter, on this twenty-seventh day of September, in the nineteenth year of Our Pontificate. LEO PP. XIII. (1) Acts, chapter 1, verse 14. Acts, Volume XXIX, page CCCXL, 14.

[*Latin ed. p. 210*]

210 FROM THE HOLY CONGREGATION OF THE COUNCIL OF PARIS. ON MARRIAGE. Day 28 of March, 1896. Session 24, Chapters 1 and 5, Concerning the Reform of Matrimony. A SUMMARY OF THE FACTS. In the year 1873, among the noble young women of Paris, stood out Maria, of approximately 17 years of age, distinguished by her beauty, education, and remarkable sweetness of voice. A noble young man, Robert, 18 years of age, was captivated by Maria's qualities and began to court her. However, the young woman does not seem to have responded to his affection, as, besides the testimonies of several witnesses, Maria herself confesses in the second procedural documents. Robert's love for Maria, as he himself recounts, grew over time, to the point that in the year 1877, "without taking into account the advice of his own family, he asked for her hand in marriage, through the intermediary of Madame la Comtesse, the mother of the young woman." Robert's request seemed to have moved Maria's mother, who, living separately from her husband, responded as follows: "My daughter is very touched by your request, but she does not wish to marry, and she would only consent if someone were to prove to her that they truly love her, by patiently waiting for her; then, perhaps, they

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might succeed in persuading her. Count on me," she said to him; "you have an ally in this house, who will never fail you, and if my prayers and my influence can persuade her in your favor, it will be done. But you see," she said to him, "the idea of marriage frightens her." After these events, in the year 1878, Robert left Paris, but later returned to his mother's house, in order to try to do something to achieve this marriage. Then, his mother...

[*Latin ed. p. 211*]

PARIS. On the 21st, the Count Arthur, a relative of the young woman's family, requested that Mary and her mother agree to this, either by arranging a marriage with Robert, or by breaking off all negotiations. The Count attempted to persuade Mary, but, as he himself recounts, she did not wish to consent to Robert's desires, because "she found him insufficient and did not please him." Robert's mother, upon receiving this response, sent a letter to Mary's mother, making the same request, but, as is now reported, "the request was poorly received by the young woman, not by her mother." Then, in order to persuade Mary to marry, it is said that Robert met with Mary's mother, who informed him that she had not borne children for two or three years, and especially avoided having children. Indeed, Mary's mother, as soon as she could, revealed her own financial difficulties to her daughter, and showed her that they could only be remedied by entering into a marriage with Robert. Therefore, Mary agreed to marry Robert, and it was decided that the wedding would take place in June 1879. However, since several months had to pass before the wedding could be celebrated, at the urgent request of Mary's mother, Mary set out on a journey to the Pyrenees Mountains, together with Robert's family. During this journey, it is said that Mary, overcome by anger and antipathy, threw the engagement ring that she had received from Robert in his face. As a result of this, the wedding would have been broken off, had it not been for Mary's mother, who diligently worked to restore peace between the betrothed; and then the marriage was definitively scheduled for October 16, 1879. On the appointed day, Robert and Mary, after a preliminary civil marriage, were joined in matrimony in the Church of St. Peter in Gros Caillon, in Paris, in the presence of Father Didon, of the Order of the Preachers, who was delegated by the parish priest, and who, together with his first assistant, officiated at the wedding ceremony. Robert, on the first night of the marriage, as he recounts, requested the marital duty, but the bride refused to comply, and even so rudely rebuked him that, on the following nights, they did not...

[*Latin ed. p. 212*]

212 PARISIAN. wished to have a separate room. Indeed, on the first day of January 1880, she abandoned her conjugal home and was separated from her husband for some time. However, the reconciliation of the Comtesse de Rochefoucauld was attempted, but it was not stable. When Robert, having

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come from Algeria, encouraged by his wife, announced his return, Mary and her mother immediately went to Belgium. Therefore, Robert, upon returning, found no one in Paris and, along with his father-in-law, took refuge in Brussels. Later, they all returned to Paris, where, through the efforts of Father Didon, the couple was reconciled once again. At that time, Mary, seemingly moved by the persuasions of her friends, is said to have resumed relations with Robert, but rarely, and in such a way that pregnancy was always avoided, even by taking appropriate medications. Meanwhile, it happened that Robert indulged in adulterous loves, and, taking advantage of this opportunity, Mary definitively abandoned her husband after three years of marriage, and on December 6, 1882, she obtained a separation of property and persons from the civil court, Robert refusing to defend himself. Then Robert undertook a great journey, and finally, returning, he approached the ecclesiastical authority, earnestly requesting a declaration of the nullity of the marriage due to the lack of consent on the part of the woman. The Archdiocesan Court of Paris, having the necessary and appropriate faculties, brought the process, which had been established by the civil court, to a conclusion. After this, the case was concluded, with both parties contesting, and finally, on July 3, 1886, a judgment was pronounced declaring "That under no aspect does the marriage contracted between Robert and Mary appear to be null." From this judgment, Robert appealed to the Congregation of the Holy Council. While the appeal was pending, Robert petitioned and obtained from the Roman Pontiff the power to reopen the process; and new procedural documents, completed by the Parisian Court, were sent to the Holy Council. In the meantime, the plaintiff

[*Latin ed. p. 213*]

PARISIAN. He requested 213 reasons from the Holy Congregation, so that, besides the doubt of the nullity of the marriage, another reason might be added for a dispensation from a marriage that is valid but not consummated. To this petition, the Holy Congregation replied: "Consideration will be given to this matter on the 7th of the opposition calendar." Robert, the Defender, divides his argument into three sections. In the first section, he discusses the nullity of the marriage. In the second, he discusses the dispute concerning a marriage that is valid but not consummated. In the third, he discusses the Pontifical dispensation. The first section, in turn, is divided into three articles, in the first of which he argues that the alleged marriage, if it can truly and properly be called a marriage, must be declared null and invalid, because it was contracted not with a free and spontaneous consent, as the Sacred Canons require, but through importunate prayers and persuasions of the girl's mother, even though threats, violence, and fear were not involved. In the second, he defends and maintains that it must be declared null and invalid, not only because the consent was not free and spontaneous, but because this consent, which is absolutely required

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and necessary in marriages, was entirely lacking. In the third article, he seeks to prove that the alleged marriage is not only null and invalid because of the complete lack of consent, but also because the conditions imposed upon it were contrary to the very substance of the marriage. DEFENSE OF THE HUSBAND. In the second section, he undertakes to demonstrate that the dispute concerning a marriage that is valid but not consummated cannot be denied. In the third section, he vigorously argues that, even if, hypothetically, a marriage existed and could be considered valid, it would nevertheless be entirely dispensable. Descending to the first article of the first section, he argues that the marriage was not entered into with full freedom and spontaneity, since the girl's mother herself admits that...

[*Latin ed. p. 214*]

214. PARISIEN. stated that he had urged his daughter to enter into these marriages. He said to Robert, "That his daughter had little inclination for marriage, but that he would later persuade her," which he repeats in a brief summary of the facts that he included in a petition submitted to the Supreme Pontiff. Finally, Robert's advocate further asserts that this was confirmed more and more by numerous witnesses, of whom he mentions only one and another, merely to avoid tedium, and to prevent the discourse from becoming too lengthy. Furthermore, the advocate argues that, if it is established that Mary did not enter into the marriage with full spontaneity and freedom, and that Mary was compelled to enter into it by her mother, and therefore, without spontaneous and free consent, such a marriage is null and void; since the Sacred Canons strictly prescribe that marriages entered into without spontaneous and free consent are null and void. Chapter 24, On betrothals and marriages. The advocate also asserts that this marriage could not be considered to have been contracted without coercion, without force, and without fear; and therefore, it should be declared valid, rather than null; since Canonists and the Holy Congregation teach that, in order to establish the nullity of a marriage, it is not always necessary to prove that threats, force, or fear were present, affecting a steadfast man, but it is sufficient that it is established from other sources that the consent was not free; as is stated after Castilian Controversies of Jurisprudence, in the commentary on book 3, chapter 1, number 154, where ten and seventeen doctors are cited, and Coscius, in De separ. tori, chapter 16, number 222, also states. The Holy Congregation agrees with this in the case of the marriage in Capuana, on January 24, 1871. "In order to establish the nullity of a marriage due to a lack of free consent, it is not always necessary to prove that threats, or force and fear, were present, affecting a steadfast man, or that bodily torments were inflicted, but it is sufficient that it is established from other sources that the consent was not free, without which the marriage is absolutely null; therefore, even mere importunate requests are sufficient to prove that free consent was not present." It is not difficult,

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therefore, to...

[*Latin ed. p. 215*]

PARISIAN. 215: It is asserted that the consent given by Mary to this marriage, in obedience to her mother, was not free; and therefore, it provides a most serious reason for the dissolution of the bond, to which she submitted with a reluctant mind. *Navar. Cons. 3, tit. De Sponsa!, lib. 4.*

However, the advocate, proceeding to the second article, argues that no marriage should be pronounced valid in this case, because the consent was not free; and he is even more insistent, because this consent, which is absolutely necessary in marriages, is entirely lacking in this case. Indeed, he maintains that for the validity of marriage, "true consent" is absolutely required, which must be mutual, present, and manifested by words or other signs. For, as the law states in 1, ff. De pactis § 11, marriage is nothing other than a convention between a man and a woman, and this convention is nothing other than the mutual agreement of two parties. Mutual, as each party transfers the right to their body to the other and accepts it, as is clearly stated in Chapter 1, De spons. duor. Present, because betrothals are only for the future, not marriages, as is clearly evident from Chapter 31 De spons. et matrim. Finally, manifested by words or other signs, since no human contract can be entered into unless the will of both parties is expressed and mutually known. To support this, he cites Pirhing, lib. IV, tit. I, Sess. 7, n. 82.

With these points established, he insists that there is no doubt that the sufficient and perfecting cause of marriage is the mutual consent of the contracting parties. Therefore, Eugenius IV rightly states in the Decree for the Armenians: "The efficient cause of marriage is, in a regular manner, the mutual consent expressed by words in the present tense."

Therefore, having established that true consent is required for the validity of marriage, namely, mutual consent, present, and manifested by words or signs, the advocate argues that it must be examined whether such consent existed on the part of the woman in this case, as evidenced by the procedural records. However, he continues, the procedural records do not show that such consent existed on the part of the woman. Indeed, even...

[*Latin ed. p. 216*]

216. The Parisian asserted that Mary never had any affection for Robert, and that it was beyond doubt that she did not give her true consent, nor did she offer any sign indicating consent. Indeed, the witnesses state that when the bride was questioned by the priest about her consent, she did not respond with "yes." Therefore, concerning the matter of the man from Versainville: "I was also a witness to the marriage in the church... I did not hear her speak, although I was near her and my eyes were fixed on her. I did not see her make any sign, either to obtain the consent of her parents,

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or to give her consent to the marriage." To this, the lawyer, Robert's brother, and the wife of Kersaint, Robert's sister, added their testimony. Finally, the lawyer states that the matter is placed beyond all doubt by Mary herself, for in her second deposition, she swore that "in the church, when I was asked about my consent to the marriage, I did not answer anything, nor did I make any sign, so much so that Mr. the First Vicar of St. Pierre du Gros Caillon said to me: 'Answer, 'Yes,' my Father,' and even so, I did not answer the church; I did not give either internal consent, nor external consent." Therefore, the defender concludes that, since it is clearly evident that the marriage was not entered into with true consent, and it is certain that, on the part of the woman, there was a complete lack of even external consent, it follows that this marriage is manifestly vitiated by the flaw of nullity. After these statements, the lawyer proceeds to the third article of the first section, arguing that Mary's marriage should also be declared null and void because conditions were imposed that were contrary to the very substance of the marriage. He maintains that conditions imposed on a marriage that are contrary to its substance destroy the very matrimonial contract. He proves this by citing chapter 7, "De Conditionibus" [Concerning Conditions]. However, according to the lawyer, conditions contrary to the substance of the marriage were added, namely, that Mary, and especially her mother, added the condition that Robert should not have children for two or three years.

[*Latin ed. p. 217*]

The Parisian [lawyer] argues that Robert should be held accountable, and furthermore, he maintains that an additional condition was added, namely, that the marriage itself should be dissolved whenever the spouses did not agree on matters pertaining to the marriage. However, Robert affirms that this additional condition was the first one stipulated, stating: "When he gave me his daughter, Mr. [de] made me promise not to have children for at least two or three years; he even made me swear it." The defender of Robert vigorously defends this statement, so much so that even Mary and her mother do not deny it, but rather they assert that this initial condition was not imposed upon them by Robert, but rather that Robert himself imposed it upon himself, and that they accepted it.

Furthermore, the lawyer argues, citing Schmalzgrueber, part I, title 5, numbers 6, 7, and S, that a condition is considered to be contrary to the essence of marriage when it conflicts with the three goods of marriage, namely, the good of procreation, the good of fidelity, and the good of the sacrament. However, Robert's defender contends that the conditions imposed do not conflict with the goods of marriage, for the first condition conflicts with the good of procreation. Although procreation and the generation of offspring are not part of the essence of marriage, nevertheless, from the consent given in this agreement, an obligation arises to perform acts

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suitable for procreation, if requested by the other party. However, due to the aforementioned first condition, namely, to avoid procreation for two or three years, this obligation to perform acts suitable for procreation would be rendered tenuous; therefore, he concludes, the aforementioned condition is contrary to the good of procreation, is contrary to the essence of marriage, and vitiates and completely destroys the marital contract.

The same must be said of the second condition. The lawyer argues that the condition of dissolving the marriage whenever the spouses did not agree on matters pertaining to the marriage is contrary to the good of the sacrament, which demands a perpetual and indissoluble union of life; therefore, it is contrary to the essence of marriage, and consequently, he maintains, it destroys the marital contract.

[*Latin ed. p. 218*]

218. PARISIEN. The advocate could not object that these conditions were of no value and should be considered as not having been imposed, because the matrimonial consent was not given before the parish priest and witnesses with these conditions. It is answered that it is sufficient to prove that these conditions, contrary to the purpose of marriage, preceded it, and were never revoked, since the consent subsequently given before the parish priest and witnesses is considered to have been given with the same mind and intention, even if the conditions themselves were not again explicitly manifested in the act of marriage. Thus, Piton, Disputations, 58, no. 12 and following; Coscius, On the Separation of Married Couples, chapter 21, no. 14 and chapter 16, no. 271 and following; Rota, in January, Profession, July 3, 1702, Abolines. Having reached this point, the advocate turns to the second part of his argument, and contends with all his might that there is absolutely room for discussion regarding a marriage that is valid, but not consummated, because he uses this argument to support and strengthen his reasons for the nullity of the marriage. He asserts that Robert could in no way be prohibited from using this defense, according to the well-established rule of Canon Law, number 20, which states: "No one is prohibited from using more defenses." However, it is undoubtedly the case that Robert intends to use this further defense to better demonstrate the nullity of his marriage and to strengthen his arguments; therefore, he concludes that Robert cannot be prohibited from doing so. Furthermore, the advocate continues, it is not necessary to initiate a formal process for a case concerning a marriage that is valid but not consummated, if it can be said that an ordinary dispensation from the Roman Pontiff is required; however, he does not believe it is necessary if an extraordinary remedy is sought, namely, to strengthen the arguments for obtaining the nullity of the marriage, as is evident from numerous examples in the treasury of resolutions of the Sacred Congregation of the Council. Finally, having completed all that pertains to the first and second parts of his defense, the

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advocate proceeds to the third and final point, and maintains that if, in this case, the marriage...

[*Latin ed. p. 219*]

PARISIAN. He argued that, given the condemned hypothesis, a valid renunciation would be entirely dispensable. The canon, he continued, of ecclesiastical jurisprudence states that a dispensation for marriage is granted when these two extreme conditions have been proven: namely, that the marriage has not been consummated, and that there are grave reasons for granting the dispensation. Indeed, the advocate asserted, it is certainly true that these two extreme conditions are verified in the present case. He maintained that the consummation of the marriage is lacking, since, according to the laws of the Holy Councils, marriage is properly said to be consummated only when it is established that a union sufficient for procreation has taken place, as taught by the Holy See in the matter of the marriage in Nusco, September 11, 1880. However, the advocate insisted, even if it is proven that the hymen has been altered, it is of no avail, unless it is also legitimately proven that there was an introduction of the penis into the woman's vagina, and that the semen of the man followed, according to the teaching of St. Thomas, 4 sentences, d. 41, question 4, article 1, question 4, ad 2. The Holy See concurs with this in numerous decisions, and especially in the matter of the marriage in Florence, January 27, 1877, number 26. Moreover, the advocate added, throughout the entire course of the proceedings, no mention was made, nor a single word spoken, of the emission of semen within the woman's vagina; on the contrary, it is evident that, apart from other things, appropriate and effective remedies were employed to prevent such an event from occurring, or from being possible; therefore, he argued, it must be said that the marriage in the present case has not been truly and properly consummated, and therefore, in this regard, a dispensation may be granted. But not only has the marriage not been consummated, but there are also several canonical and grave reasons, the advocate continued, present in the case, which have consistently urged the Roman Pontiff to grant a dispensation. Indeed, he said, the first reason is the aversion of the parties, which has always been and still is present between the spouses and their respective relatives and in-laws, so that no hope whatsoever of reconciliation shines forth.

[*Latin ed. p. 220*]

220. The Parisian asserted that this [case] is both canonical and of grave importance, and that all canonists affirm this. However, he maintains that the second reason, namely, the dissensions and animosities that are abundant in the present case, provide a just cause for a dispensation, as Ursaya explains in his *Disputationes*, 21, nos. 60, 61, and 62, vol. 3, part 2, and in *Disputationes*, 7 and 77, vol. 3, part 1. He states that these [dissensions

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and animosities] have existed in this matter, and still exist, as evidenced by published periodicals, which continue to report on them. Finally, he concludes that the third reason is the greatest probability, indeed, the certainty, of the nullity of the marriage.

REMARKS OF THE DEFENDER OF THE MARRIAGE. The defender of the marriage, on the contrary, observes, first of all, how the present judgment has been instituted, not in the name of Robert, but in reality, in the name of Mary. For when the judge asked: "What new proofs, what new witnesses, are you considering presenting to the Tribunal?" Robert replied: "I have no new proofs to present, nor any new arguments to advance." Mary, on the other hand, presents witnesses against the marriage and declares to the judge: "I must say that on all points relating to the validity of the marriage, to the conditions imposed and accepted, to the lack of consent, to the absence of any response, and even of any sign to the Church, I must retract my previous testimony and acknowledge that I did not, at that time, tell the truth." This course of action taken by Mary is highly displeasing to the orator, for, as Leuren states in *Tractatus de Matrimonio*, book 2, question 607, "the recantations of witnesses are only of some value when the witness 'presents a most probable reason for his error'; or when the witness 'is a person of such integrity of faith and such authority that he must be believed when he asserts that he was previously deceived or has forgotten the facts'; and these corrections must be made before the publication of the testimonies." But Mary sings her palinode *after* the testimonies have been presented, and not only does she not present a most probable reason for her error, but she cannot even assert that she was deceived or has forgotten the facts, nor can she be heard if she says that she lied in the first instance, as no one can reveal their own shame, *Rotuli Decisorum*, 665, no. 12.

[*Latin ed. p. 221*]

PARISIAN. 221, part 1, and decision 351, no. 9, part 19, recently cited; and therefore, no one is admitted to prove it, ibid., Rot. decisions 1, no. 12, decision 424, no. 12, part 12, and decision 4, under no. 16, part 13. Afterwards, the defender of the sacrament, Doctor Serrand, presents testimony, which sheds light on the palinode of the Countess Mary. With these premises, the tutor's representative directly refutes what the plaintiff alleges against the validity or consummation of the marriage. First, with regard to fear, he observes how, according to all laws, fear must be proven by facts; thus, the Rota in decision 307, no. 17, part II, recently cited, states: "All the witnesses testify that the Duke Charles was, by force or by order of his father, induced to the marriage, which is a general proof that is not sufficient." This doctrine, the advocate argues, is even more pressing when it is a question of reverential fear, because this kind of fear does not, of itself, acquire the necessary gravity to invalidate the marriage, but only

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from the circumstances in which it is aroused, as Sánchez de matr. lib. 4, disp. 6, no. 14, states. However, the defender of the sacrament argues, not only are witnesses lacking who testify to persuasions and requests, but witnesses are lacking who openly exclude fear. But there is something more, exclaims the defender of Mary. For Mary's parish priest, questioned by the judge: "Were the banns published regularly, and did they lead to the discovery of any impediment, or any difficulty?" replied: "The banns were published regularly, but with a dispensation of two banns. Miss Mary came with her mother and her future husband for this formality. She even returned several times to arrange the ceremony of the marriage." From these testimonies, the advocate concludes, what credence should be given to those witnesses who claim that the bride contemplated fleeing during the civil and ecclesiastical marriage ceremonies, and therefore arrived late at the church; otherwise, Mary herself denies this and gives reasons for her delay.

[*Latin ed. p. 222*]

222. The Parisian [defense attorney] also seeks to demonstrate that [Mary] was not genuinely consenting. He claims that [Mary] entered the church in a state of distress; however, the parish priest, his vicar, and many other witnesses openly assert the contrary. Proceeding with his argument, the defender states that even from the woman's own perspective, there is external evidence of her consent, and that those witnesses who claim to have not heard [Mary] respond to the priest with "yes" should not be believed. Furthermore, he argues that numerous witnesses, all of greater standing, testify that they had no doubt whatsoever regarding the validity of the marriage in relation to the bride's consent, or that they observed the bride clearly expressing her consent. Father Didon, the Count de Sesmaisons, the Count de Groulaine, and Adrian de Mailly state that this marriage presented nothing extraordinary, which, according to the speaker, could not be said if the bride had refused to manifest her consent before the parish priest. Moreover, the defender insists, it is not true that no one heard [Mary] express her consent. Indeed, the parish priest, after stating: "I have paid sufficient attention to this marriage," when asked: "Did you hear her response to the questions posed by Father Didon?" affirmed: "Yes, I saw her bow and say: 'Yes,' in a low voice." Alternatively, the parish priest testifies: "As I did not see the young woman respond, I said to her: 'Respond, yes, my Father.' She bowed in a gesture of assent which I considered to be a 'yes.'" Furthermore, the couple, according to the guardian of the marriage bond, did not enter into the marriage with an agreement to avoid having children. First of all, the defender argues, it is false that [Mary] detests the role of mother and the name itself. The Duchess of Madrid testifies: "Never, to my knowledge, has she shown me such sentiments. And even one day, she told me that she had hoped to

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become a mother." Furthermore, other witnesses assert that [Mary] has always loved children in a special way.

[*Latin ed. p. 223*]

PARISIAN. 225 Furthermore, the advocate maintains that he will present irrefutable arguments against such a supposed agreement. Indeed, Mary, the mother, when questioned by the judge, responded: "Before agreeing to Mr. Robert, did you not impose certain conditions, to your satisfaction, and what were they?" She replied: "I never imposed any conditions." Again, the judge asked: "Did you not request, whether it was agreed upon with your daughter or whether you did so on your own initiative, that Mr. Robert would at least, for a time, refrain from claiming his rights as a husband towards your daughter?" Under oath, she responded: "I never made such a request." However, the advocate states that Robert himself, in his stories, boasts of avoiding offspring through an agreement. Indeed, in court, he swears: "I responded vaguely, without giving any formal promises, that I would do everything possible to protect the health of his daughter." Certainly, neither the mother nor the daughter would have been satisfied if Robert had demanded anything other than what Mary, the mother, affirmed, namely: "That, without abandoning his rights, he would exercise the utmost gentleness." Robert also states: "On the evening (of the initiation of the marriage), we went to bed together. I asked her to fulfill her duty." From these things, it is clear that, according to the defender of the marriage bond, one should not believe the testimony of Henry Hamelin, when he states: "He [Robert] himself proposed to the mother of his fiancée that they live together in marriage as brother and sister." Now, approaching the final point of his argument, the defender contends that there is no room for discussion in this case regarding the doubt of a valid but unconsummated marriage. For, according to law 43 ff. of the *De regni iur.*, it is stipulated: "Whenever several actions of the same nature are involved, one must attempt only one." Moreover, it is impolite in this court to discuss a matter which the judicial document completely omits, and about which the judicial investigation proceeds only through hearsay. Therefore, he says, if Count Robert believes the marriage to be unconsummated, he should file a lawsuit to that effect.

[*Latin ed. p. 224*]

224 PARIS. Benedict XIV, in constitutione *Dei miseratione*, § 15, praescripsit: "Si Pontifici propositum est, et postquam investigatio de matrimonio inconsummato et causis dispensationis completa est, de dispensatione disputetur. Sed etiam sine speciali processo, evidenter vincula tutoris, asserit, constare de coniugii consummatione." Ipse enim comes in iudicio professus est: "Toute dernièrement encore et sachant que le mariage avait été consommé, le P. Didon m'engageait à demander l'annullation." Mater

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Roberti, archiatro Serrand testante, pariter professa est: "Je sais bien que le mariage à été consommé." Mater Mariae testatur: "Ma fille se décida elle même à entrer dans la chambre de son mari. Deux ou trois jours après Mr. Robert, vint m'embrasser en entrant pour le déjeûner et me dit avec satisfaction: - Maintenant je suis vraiment votre fils. Il affecta alors de traiter sa femme avec douceur, appellant: 'ma petite femme'." Praeterea, addit orator, multi alii testes sunt, qui rem eandem confirmant. Hisce praenotatis, proposita sunt diluenda Dubia I. An sententia Curiae archiepiscopalis parisiensis sit confirmanda vel infirmanda in casu. II. An sit locus disceptationi super matrimonio rato et non consummato in casu. Et quatenus affirmative, III. An sit consulendum SSmo pro dispensatione matrimonii rati et non consummati in casu.

RESOLUTIO. Sacra Congregatio, re disceptata sub die 28 Martii 1896, censuit respondere: ad I, sententiam esse confirmandam; ad II, negative; ad III, provisum in secundo.

[*Latin ed. p. 225*]

225. APUANA. DOUBTS CONCERNING THE RESIGNATION OF BENEFICES. July 25, 1890. By summary petitions. A SUMMARY OF THE FACTS. The Diocesan Ordinary, the Sacred Congregation of the Council, proposed the following question on August 24, 1895: Pope Gregory XIII, in his Constitution *Humano vix*, decreed that the person resigning a benefice, that is, he who has obtained a benefice from another, must publicly announce this provision in the Church within six months, if he obtained it from the Roman Pontiff; and within three months, if he obtained it from lower prelates; under penalty of nullity of the same collation, and reversion to the Holy See. Now, the question is asked: Given that an impediment exists, such as the granting of a royal *Exequátur* or *Placet*, can the time for publication be extended until the cessation of that impediment?

A SYNOPTIC DISCUSSION. In truth, the letter of the pontifical rescript presents some difficulty, since it absolutely commands that all the formalities prescribed therein must be observed under penalty of nullity. It is decreed: "If anything of the aforementioned is omitted, after the terms prescribed have elapsed, all dispositions and graces of those who have resigned or relinquished benefices and rights of this kind, with all that follows therefrom, whether peaceful or contentious, shall be void and of no effect, and no other grace shall be granted to those to whom such benefice or right has been granted, etc." These terms are defined as follows: when the provision is made by the Roman Pontiff, the formalities of publication must be carried out "within six months if the benefice is beyond the Alps, and within nine months from the date of the grant of the grace, and not from the date of the consent given to it." On the other hand, if the collation of the benefice is made by a Bishop, it must be "so that it is considered

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within three months from the Act."

[*Latin ed. p. 226*]

226 In APUANA, si una provisio est facta, ea debeat esse publicata, et possessio beneficii debeat esse assumpta modo et forma supra dictis; alioquin, si ea non sunt observatae, illa provisio erit invalida, et beneficium erit vacant. Verum de observantia huius Constitutionis, iam in Firmana, apud Sacram Congregationem, quaestio erat die 20 Ianuarii 1894; (1) et interrogabatur si adhuc rite custodiendae essent praescriptiones huius Bullae, et si ullus valor haberetur actis his decretis non observatis, et responsum est datum: « Pro gratia sanationis, et accepta petita, quoad praeteritum, facto verbo cum SSmo ad cautelam; sed ad futurum, servetur rescriptum Constitutionis - Humano vix iudicio ». Iamvero tunc etiam Episcopus postulabat, si observantiae voluntatis Pontificis obesset necessitas differendi ultra tempus constitutum a Pontifice, actum capiendae possessionis in beneficiis, quia Civile Gubernium ad plures menses differt concessionem Regii Placiti. Tunc Vobis simpliciter placuit respondere, praescribendo observantiam Constitutionis Pontificiae. Et iure meritoque, siquidem in toto iure nihil tam commune ut « legitime impeditis tempus non currat », namque ad impossibile nemo tenetur, ut dicit communis sensus. Praeterea, Parisius Flaminius, qui celebres commentarios exaravit in hanc Bullam Greg. XIII in suo tractatu « De resignatione beneficiorum », probat plures invocando auctoritates et decisiones S. R. Rotae, hoc principium huic casui plane applicari, Lib. 11, quaest. 13. Quibus praenotatis, quaesitum fuit quid esset precibus respondendum. RESOLUTIO. Sacra Congregatio, re disceptata sub die 25 Iulii 1896, censuit respondere: Servetur Constitutio et ad 'mente) n. (1) Relata fuit Vol. XXVII, pag. 8, quaestio haec.

[*Latin ed. p. 227*]

227 FROM THE HOLY CONGREGATION OF RITES, LYONS. Concerning the Beatification and Canonization of the Venerable Servant of God, Marcellinus Joseph Benedict Champagnat, priest of the Marist order, and founder of the Little Brothers of Mary. Those whom the parents offered to Christ the Lord, while He still dwells on earth, namely, children and infants, so that He might bless them, themselves shone as a light for the Catholic institution dedicated to childhood, by which the Church, the Bride of Christ, ceaselessly cherishes and increases the sons born of the sacrament of baptism. And whereas, in no age have there been lacking men and women chosen by God, diligently engaged in properly instructing boys and girls, now, as this age declines, a host has arisen, almost united in discipline and spirit, which never ceases to care for the Christian and civil education of youth. Among these, the Servant of God, M. Champagnat, Founder of the Little Brothers of Mary, deserves special praise, who was born on May 20, 1789, in the town called Rozet, from the parish commonly

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called Marines, in the diocese then of Aniciensis, now Lugdunensis, and whose parents, though not rich in worldly possessions, were rich in virtue. The following day, he received the sacraments of baptism, and the names Marcellinus, Joseph, and Benedict were given to him; and it is said that God foreshadowed the future sanctity of this child, with a brilliance bestowed upon him in his cradle. Under the care of his mother and aunt, the boy received the seeds of religion and virtue, and, having reached the age of eleven, he approached the sacred altar for the first time, with the proper purity and fervor. When he had already completed his third decade, God called him from the fields, where he was helping his parents, and, readily obeying the divine vocation, which was approved by the priests, he offered himself as a student to his uncle, who was a teacher of the Latin language in the parish of the Most Holy Savior. After beginning his studies for a full year, the young man, despising obstacles, entered the small seminary commonly called Verrières, and there, he excelled in piety and modesty, overcoming the sluggishness of his intellect through study and diligence. Having completed the curriculum of letters and philosophy, and in the year 1812, having been received into the major seminary of Lugdunense, he devoted himself to learning the theological disciplines, and, during the customary vacations, he eagerly undertook ecclesiastical duties. Having been advanced through the orders, and on July 22, 1816, having been ordained to the priesthood.

[*Latin ed. p. 228*]

228 From the Sacred Congregation of Rites, concerning the Virgin Mary, whose celebrated sanctuary at Fourvière is named in her honor, had come, together with more fervent companions, to implore her aid, and had devoted and consecrated herself entirely. On the twelfth of August of the same year, having been sent to the town of Oppido for several years, fulfilling the office of Curial Vicar, he renewed the morals of the parish with pastoral solicitude. When, on one occasion, he found a young man gravely ill and entirely ignorant of the Catholic faith and the law, he resolved to carry out a plan already begun and approved, and gathered lay brothers for the Christian upbringing of children in a small house. In the year 1824, a larger house was built in the place commonly called "L'Hermitage," and, having relinquished the vicariate of La Valla, the Servant of God was entirely dedicated to the burgeoning religious family of the Brothers of Mary, striving to promote it. Marcellinus ardently desired that the Society of Mary, already founded by Father John Colin, and approved by the Apostolic See on September 24th of the year 1836, should, from the beginning, be joined by him, and that he should subsequently bind himself to it through religious vows; and he regarded his own society as a smaller and younger sister. However, he endowed this society with special laws, fostered its growth, governed it wisely, and assisted, with counsel and work, the newly elected

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Superior General, chosen by the votes of the Brothers in the year 1839, admirably pursuing the sacred ministry for the good of the faithful. Finally, the work of the Servant of God was the erection of a house of formation in the fortress called Vouban. For shortly thereafter, broken by labors and infirmity, he was compelled to lie in bed, and, having received the sacraments of the Church in a fitting and holy manner, he offered to the Brothers, as the last tokens of his love, exhortations and blessings; and finally, commending himself to his Guardian Angel, and frequently invoking Jesus and Mary, he passed away from earthly sorrows to heavenly joys on Saturday before the Feast of Pentecost, on June 6th of the year 1840. The reputation for holiness, which Marcellinus had acquired during his life, was confirmed after his death by the clergy and the people who flocked to his funeral, and it spread more and more each day, so that an Ordinary Process was held in the ecclesiastical court of Lyons. This, having been duly completed and presented to the Sacred Congregation of Rites, at the humble request of the Reverend Father Claudius Nicolet, a priest of the Marist order and Promoter of the Cause, the Most Holy Pope Leo XIII, through Decrees issued on April 28th, 1893, March 29th, and December 12th, 1895, not only approved the Decree of the Sacred Council concerning the revision of the writings of the Servant of God, but also granted permission for the introduction of the Cause.

[*Latin ed. p. 229*]

From the Sacred Congregation of Rites, 229, less than a decade had passed since the aforementioned exhibition, when the process could be presented in the Ordinary Assembly without the intervention and vote of the Consultors. Therefore, having attentively considered the repeated requests of the aforementioned Promoter, and also those of the Marist Brothers and the Little Brothers of Mary, presented in writing, and especially the petition letters of several Eminences, Most Reverend Prelates, and other men of ecclesiastical distinction, the undersigned Cardinal, Prefect of the Sacred Congregation of Rites and Relator of this Cause, in Ordinary Assemblies held at the Vatican on the date indicated, proposed the following question for discussion: "Should a Commission for the Introduction of the Cause be appointed in this case and for the purpose in question?" And the Sacred Congregation itself, having carefully considered all matters, and having heard the opinion, both orally and in writing, of the Reverend Father Doctor Gustavo Persiani, who held the office of Promoter of the Holy Faith, decided to respond: "Affirmatively, that is, a Commission should be appointed, if it pleases the Most Holy Lord." On July 28, 1896. Subsequently, I, the undersigned Cardinal, reported these matters to Our Most Holy Lord, Pope Leo XIII; His Holiness approved the decision of the Sacred Congregation of Rites and deigned to sign the Commission for the Introduction of the Cause of the aforementioned Venerable Servant of God, Marcellinus Joseph

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Benedict Champagnat, on August 9 of the same year.

C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites.

L. S. A. TRIPEPI, Secretary of the Sacred Congregation of Rites.

Synopsis of the Life of the Servant of God.

The Servant of God was born in a practically unknown village in the parish of Marlhes, called Rozet, in the diocese of Le Puy, now the diocese of Lyons, on the twentieth day of May in the year 1789, from parents who were not distinguished by wealth, but by their devotion to religion, who, on the day after the birth of the child, took care to have him cleansed with the sacred waters and baptized, giving him the names Marcellinus Joseph Benedict.

It soon pleased Almighty God to manifest, by not obscure signs, that the boy would shine with sanctity, whom He had raised up for His glory and for the good of society: for...

[*Latin ed. p. 230*]

230 From the Sacred Rites, as if adorned with the stigma of sanctity, a flower bloomed, and repeatedly, in its cradle, heavenly splendor shone forth, astonishing the pious mother, who "gradually reassured herself, thinking that God had particular designs for the future of this child": but the citizens, observing the outstanding virtue that followed, and witnessing the remarkable deeds of the same, were wont to say: "It is not surprising that he does so much good; he bore the mark of a saint when he was born." It is easily understood how diligently the most blessed mother strove to instruct and cultivate this son, whom she knew, with a certainty almost like faith, to be favored by the particular providence of God, in piety and religion. She found an assistant in fulfilling this duty in her daughter-in-law, whom the most terrible and well-known storm of the Gallic tumults had driven from the home of sanctity, which had disturbed and expelled many excellent women and men from the sacred tabernacles. The most pious women took care that the seeds of Christian virtues might be sown very early in the heart of this child, having nothing older than to hear from his infant lips the sweetest names of Jesus and Mary. The testimonies of virtue, given by him, were not without effect; for Marcellinus, having inherited a good soul, and "thus cultivated and formed in piety by his mother and his aunt, became a pious, docile, modest child, and preserved himself in the greatest innocence." One could see him, still a child, following with firm steps the example of the Angels, worshipping God in the temple, and at home, diligently performing his duties to his mother. He did not engage in harsh games with his equals, and especially with the girls. "Even as a very young child, he stood in the church like an Angel. In his family, he preferred to stay with his mother,

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and to help her in the household chores, rather than to play with the other children. He did not like to see the little boys playing with the little girls, and he told them that it was not right." Which Christian woman, of such an amiable disposition, would not love this child, who surpassed the other children in the excellence of his morals and the pursuit of virtue, with the most profound affection? Therefore, it is not surprising that his mother had no one more dear to her than him, if she loved her little Marcellinus more than her other children, "because he was more gentle, more pious, more helpful than his brothers." Nor did his aunt feel a lesser affection for him, when he reached the eleventh year of his age, at the first Sacred Synaxis.

[*Latin ed. p. 231*]

From the Sacred Rituals, he received this [appointment] with the utmost fervor, holding it most dear to his heart. From the sentiments of piety and the purity of spirit with which the most innocent young man approached the Eucharistic Table, it can be clearly understood that "the elders of Marines were accustomed to present Marcellin as an example to their children, when those children were preparing for their First Communion. Mr. Courbon, of Rozet, stated that his father, who was a childhood companion of the young Marcellin, often told him: 'Marcellin was a boy who never knew evil, who never strayed from the right path; he was the model for other children in his piety, his modesty, and his humility.'" Throughout the first twenty-five years of his life, he diligently assisted his parents in cultivating the fields and grinding the wheat, "distinguishing himself by his good conduct, his piety, and his love for work, which he maintained throughout his life," and he already possessed those excellent qualities of mind, which are rarely manifested in the youthful age; indeed, "he was clever, industrious, and economical; he succeeded in everything he undertook. Through his industry, he had already acquired a considerable sum, considering his age and his circumstances." Amidst these things, and with ever-increasing zeal, the purpose of God shone forth in his mind, namely, that he should be called to the royal priesthood of Christ and to the most noble ministry of saving souls. He would have readily obeyed this divine calling, the best of young men, had it not seemed that a lack of resources would hinder the pious undertaking. But it happened that at that time, two priests from the parish of that town approached him, sent by the Bishop of Lyons to inquire whether young men of good character could be found who would be willing to dedicate themselves to cultivating the Lord's vineyard, which was then lacking in necessary and suitable workers, due to a truly lamentable storm that had ravaged the entire region of France and afflicted the Church of Christ. Marcellin realized that a suitable opportunity was being offered to him, and that he should not delay, and, with the help of his plans, his most joyful mother offered him

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the sum of money that she had secretly saved from her domestic earnings. He, in turn, willingly gave his beloved mother the money that he himself had earned through his industry, so that it might be used to cover the initial expenses of beginning his course of studies. Therefore, the young man was sent, to study the rudiments of Latin grammar.

[*Latin ed. p. 232*]

252 FROM the Sacred Ritual, he learned!, at the home of his uncle, who held a literary gathering in the parish of the Most Holy Savior in Louth. This uncle, however, perceiving a certain sluggishness of intellect in his nephew, initially discouraged him; but in vain. For he, "who had prayed well, was not shaken and wished to go to the Seminary," commonly known as Verrières, which he joyfully entered in October of the year 1805. But "after a year of studies, the Superior of the Minor Seminary found that the boy did not have enough talent to continue; which greatly saddened Marcellin, but his mother encouraged his courage by saying to him: - We will make a pilgrimage to Louvesc, and Saint Francis Regis will pray, and you will be accepted again." Tenacious of his purpose, and striving with diligent studies, along with his most prudent mother, to draw down divine aid ever more, Marcellinus sought to dedicate himself to the ecclesiastical ministry, that, with obstacles removed, he might be able to fulfill it. To achieve this more easily, he began a new way of life, entirely worthy of a young man called by the Lord: for he eagerly cultivated fervor through much prayer, more frequent reception of the Sacraments, and the avoidance of worldly things. From that time on, as the words of Witness X state, "his devotion to the Holy Virgin increased considerably: every day, he said his Rosary, recommended his vocation to Mary, and asked her for the light and understanding necessary to succeed in his studies"; the virtuous young man knew that he must approach her with a trusting heart, both as the Seat of Wisdom and as the most loving Mother. With these sentiments of piety and faith, he persevered zealously in his endeavors, and soon overcame all obstacles: indeed, he surpassed his companions not only through piety and diligence, but also through his docility and humility, setting an example for them. "The Servant of God was a model of piety, regularity, docility, and humility throughout the time he spent in Verrières." He also diligently applied himself to his studies, often spending many hours at night, and he exhibited remarkable patience in enduring the shortcomings of his fellow students, which led many of them to cultivate virtue more deeply. For approximately seven years, during which time he remained in that sacred place, he fulfilled all his duties with such diligence that he earned the esteem and affection of his superiors, towards whom he strove

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to show the utmost obedience. "Righteous soul, iron character."

[*Latin ed. p. 233*]

From the Sacred Congregation of Rites, 233, I, energetic (thus the witness, XVI), with a sensitive and generous heart, human respect never held sway over the Servant of God. He was one of the most distinguished of his class, yet also among the least advanced; his timid and embarrassed demeanor, his rustic manner, naturally led the younger students to make him the subject of amusement. Although he saw everything that was happening around him, he knew how to conceal it, and nothing could divert him from the goal he had set for himself. His impeccable conduct towards everyone soon caused his merciless classmates to change their sentiments; in a short time, he quickly gained the affection of his Superiors and the esteem of the students. The zeal that he would later display in his priestly life was already growing to great proportions during the course of his studies. Endowed with an excellent character, cheerful, open, always pleased with the masters and the instructions he received, he was never heard to utter the slightest complaint. If anyone forgot themselves before him on this point, he immediately took up the defense of authority and the regulations. As soon as the Servant of God encountered someone inclined to boredom or discouragement, he would take them aside and, through his advice and good deeds, he would eventually bring them back to better sentiments and often cause them to change their behavior. Then Marcellinus composed his piety and his manners, and he had nothing older than frequently approaching the Most Holy Eucharist, and "his devotion to the Holy Virgin, to St. Louis of Gonzague, and to St. John Francis Regis increased with the instructions he heard, and with the exercises of piety practiced in the Seminary in honor of the Mother of God and these two great Saints." It could not be otherwise in a young man who sometimes contemplated the duties of a priest, and who recognized that the mind must indeed be imbued with the best disciplines, but also that the heart must be formed in virtues, and especially in piety, so that the sacred ministry, which he desired, may bring profit to souls. Since this clerical discipline was suitable for perfecting the ecclesiastical spirit, the study also increased in Marcellinus a purer and more fervent desire, as the day approached when he would stand before the altar of the Lord. Therefore, in order that he might be instructed in divine sciences, he was received in the Major Seminary of Lyon in 1812, where he showed obedience to the rules, contempt for the world, and contempt for himself. But as autumn...

[*Latin ed. p. 234*]

234. During the time of the holidays, he returned home, so that he might not neglect the exercises of Christian perfection, and so that, as was fitting, he might refresh his body with honest recreations. "One rarely saw him

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except among the sick, comforting them with good words, or in church, always in a very edifying manner. He was very humble, very mortified. At home, he wore only a very coarse cassock, and contented himself with the ordinary food of his parents, never accepting anything from others; he was already living the life of a saint." Furthermore, the Apostolic fervor, with which he was already burning intensely, he constantly demonstrated through his actions: "He gathered the children of the village in his room, to teach them to pray to God and to give them catechesis. He also gathered the adults, on Sundays and holidays, after the services of the Church, to instruct them in their duties as Christians." It was, however, even more remarkable that the Servant of God, not yet initiated into the Orders through the sacred Tonsure, and still in the bloom of his youth, greatly delighted in speaking about benefiting his brothers in Christ, and he drew boys and men, even from neighboring villages, to his gatherings, and he won the favor of all those who listened to him, who never failed to give him their attention for two, often even three, hours. Having begun this work of piously and holily instructing others, it was already easy to conjecture from that time forward what he would be like in the future, especially when it is considered that he had prepared himself most diligently and lived a truly devout life for such a task, as the following document, written by the hand of the Servant of God himself, clearly shows. "O my Lord and my God, I promise to offend you no more, to perform acts of faith, hope, and charity, and other similar acts, whenever I think of it; to avoid bad company; in a word, to do nothing that is contrary to your service; but, on the contrary, to give a good example, to encourage others to practice virtue, as far as it depends on me, to instruct the ignorant in your divine precepts, and to teach the catechism to the poor as well as to the rich. Make, my divine Savior, that I faithfully fulfill these resolutions that I have just made." Another document of the same kind is found in his records, from which it is clearly evident that the Servant of God had declared war on vanity.

[*Latin ed. p. 235*]

From the Sacred Ritual, 255, driven by the desire for glory, he had established for himself a path to Christian perfection, progressing through humility, which the Lord, through the intercession of the Virgin Mary, constantly urged upon him. A long series of pious exercises, or rather, a certain method of living patterned after the ways of the saints, which he had especially intended to observe at home, and from which he sometimes strayed, once admitted into the ecclesiastical militia and made a Subdeacon, by the Archbishop of Lyons, Cardinal Fesch, in the year 1814, on the day when the Author of our salvation was venerated in the cribs of the Magi. Whoever reads this, must acknowledge that it presents a way of life that would completely satisfy even the most rigorous censor; but this was not enough for the Servant of God: for in the following year, in which he also

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received the Diaconate from the Bishop of Gratianopoli, he made it even stricter, adding new prescriptions as he prepared himself for the Priesthood, at the end of the month of July in the year 1816. Meanwhile, the thought of founding a society had entered his mind, whose principal purpose would be the proclamation of the Gospel and the Christian education of children. This plan was discussed with his most fervent classmates in the major seminary of Lyons, among whom the Reverend Father Colin is particularly worthy of mention, who zealously fostered this pious undertaking and became the first director of the new Congregation. He communicated these plans to the Reverend Marcellino Cholleton, who at that time directed the seminary, and who approved of them and encouraged them. Nor did these learned students fail to seek heavenly light and help in this arduous work, "for before undertaking it, they all went to Fourvière to lay their project at the feet of Mary and to pray that she would bless it, if it was according to the will of her Divine Son," and because of the exceptional piety with which they honored the great Mother of God, they decided to call the new Society by her name. Scarcely raised to the dignity of the priesthood, the Servant of God quickly sought abundant material for the exercise of his sacred ministry; for sent to the town of Lavalla by legitimate ecclesiastical authority, to provide adequate assistance to the Rector of that extensive and wooded parish, he was entirely devoted to promoting the glory of God, which was his greatest concern, and to the salvation of souls, which he eagerly sought. And in order to be equipped with the best means to undertake this task, he first sought help from above.

[*Latin ed. p. 236*]

236 He was mindful of the sacred rites, knowing that every human endeavor requires divine grace to produce desired and lasting effects; therefore, he again went to the most famous Marian shrine of Fourvtère, to dedicate himself and his ministry under the protection of the Blessed Virgin; and although he had already offered many prayers, upon arriving at the aforementioned parish, when he saw its tower, "he knelt down to ask God for forgiveness for his faults, and to pray that He would bless his work." Upon entering, "he placed himself at the disposal of the parish priest to assist him and to do whatever was most difficult, and he asked him not to spare him his advice and counsel, and to have the charity to point out his faults." Thus, not only did he show himself to be utterly obedient to the parish priest, never undertaking anything without consulting him, but he also "soon won the esteem and trust of everyone." And because he understood that he could only effectively help the spiritual well-being of his neighbor when the character and weaknesses of that neighbor were understood, and when obstacles were removed that could render his assistance ineffective, guided by excellent prudence and charity, "in order to do as much good as possible, he studied the spirit of the inhabitants

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of La Valla, their character and their good qualities, their vices and their defects, the abuses and disorders that prevailed in the parish, and after having his plans approved by his parish priest, he set to work." After these things, it would be quite superfluous to declare, through lengthy prayer, the abundant harvest that the servant of God gathered through his constant labors, for he was constantly moved by an ardent zeal to benefit his brothers. Indefatigable in ministry, diligent in works of charity, after caring for the people for only a few months, the happy town appeared completely renewed: "faith was revived, piety flourished, the sacraments were frequented, and the parish was renewed." He declared war on idleness, drunkenness, gambling, bad books, and spared no effort or annoyance in order to eradicate these vices and abuses, rebuking, imploring, and reproaching, either openly from the pulpit or in private, with all patience and instruction. At whatever hour he was summoned, to offer religious comfort to the sick, he went without delay, even if a snowy winter or a stormy night seemed to suggest the contrary.

[*Latin ed. p. 237*]

S. C. RITUUM 237. Once chosen as a peacemaker, he resolved domestic disputes and calmed private vendettas! Above all, his most devoted charity was evident in the sacred tribunal of Penance, where he sat from morning until evening, striving with all his might to bring sinners back to the path of righteousness and to increase the fervor of the devout. "It was especially at the holy tribunal that the ardor of his zeal burned brightly. His advice was practical and always suited to the needs of each individual. There, one was sure to find the representative of the Divine Master, a wise guide, and a father full of compassion and tenderness. There, his words, filled with unction, were all ablaze with divine love." His zeal knew no bounds, but it was tempered by prudence and gentleness, which could easily attract even unwilling hearts and often win them over to our admiration. Therefore, let no one be surprised if he was able "in a short time to gain the esteem, respect, and affection of the inhabitants of Lavalla. His simple, affable, yet dignified manner, his zeal, his boundless devotion, were the only means he used to do good and to win souls to Jesus Christ. He readily spoke to anyone he met; his frankness, combined with a heartfelt sincerity, made his conversations charming, and he never failed to add a few words of edification." No type of person was exempt from the paternal solicitude of the Man of God; and because he had experienced, according to the upbringing he received from a young age, the people growing and their morals improving, his ardent zeal was also particularly directed towards children, to whom he began to impart the precepts of faith and to instill the spark of heavenly love. He prepared them with all diligence for the first Holy Communion, and he gave small gifts to those who brought new companions to catechesis. The children responded to the care of the excellent priest; they "came with

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pleasure to Catechism: cold, snow, rain, nothing could stop them." The town of Lavalla enjoyed the benefits of this outstanding and benevolent man, until one day, being summoned to administer the Sacraments to a young man who was near death, he discovered, to his great sorrow, that the young man knew absolutely nothing of the essential truths necessary for the salvation of his soul. He explained the most important dogmas of the faith to him in the best way he could, and he led him to the very last of the sacraments of the Church, namely, Holy Communion.

[*Latin ed. p. 238*]

238 Our institutions, devoted to the observance of sacred rites, He sought to compare with the best, and He rejected them. About to return, having consoled a man ailing not far from Him with His presence, He received news of the death of another. Moved by this new sorrow, considering the ignorance of salutary things among the poor, in which many young people, especially those from the countryside, are immersed and may languish, He perceived a divine impulse, by which He was called to undertake immediately the most salutary work that He had long contemplated for the Christian instruction of children. Therefore, He resolved to delay no longer, to abandon all hesitation, and to overcome all obstacles. The solicitude of the pastoral office did not deter Him from the plan, which, as We have mentioned above, He had entered into with pious companions in the larger Seminary of Lyons, belonging to the Society, wholly devoted to the spread of the faith and the care of Christian education in childhood, but rather, the unhappy state of so many children, whom He saw with His own eyes growing up in the greatest ignorance due to the lack of teachers, and deprived of all religious and religious and urban discipline, confirmed Him in this. He pitied the children of the countryside, to whom the bread of eternal life was denied, and He desired to provide for this great need through a society of men who, with the most devoted parents, would undertake to care for them, and to cultivate their minds with the precepts of piety and learning. He was eager to devote himself to this work so beneficial to religion and the fatherland, and although it could be said that this undertaking had originated from the day when Father Colin, the first director of the Marist Fathers' Congregation, took office, nevertheless, the Servant of God did not consider it sufficient to simply consult. He wanted to entrust this task primarily to lay brothers, since they, not being burdened by the duties of the ecclesiastical ministry, could more readily devote themselves to it and care for it with greater zeal. Therefore, whenever He spoke with the Marist companions, either in person or by letter, He would urge them with these words: "We need brothers to teach catechism and to run schools for the children." And they, responding, "Entrust us with the brothers, since you have had the idea," He diligently pursued his purpose through sacred prayers and the wise counsel of others. Thus, a new light shone upon the

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Servant of God, when, while administering the Sacraments to that ailing young man, he discovered that...

[*Latin ed. p. 239*]

From the Sacred Ritual, 259, he had understood the blindness of minds concerning matters of faith, and thus, the Divine Will clearly revealed to him. Immediately obeying, he disclosed this to John Mary Grangeon, still a young man flourishing in his youth, who, with equal promptness and simplicity, gave this response: "I am in your hands; do with me what you will. I consider myself infinitely happy to dedicate my strength, my health, and even my life to the Christian instruction of children, if you judge me capable." The Servant of God, delighted, added his encouragement, saying: "Have courage! God will bless you, the Holy Virgin will protect you, and you will soon have new companions," as indeed happened; for a few days later, "divine Providence sent him Jean Baptiste Audras, born in Lavalla, a young man of intelligence, of angelic candor and purity. He became the second stone of the Institute," which, like an evangelical mustard seed, was destined to grow high and wide, and to produce abundant fruits for the benefit of Christian and civil society. These, which should be considered as the first beginnings of the new Institute, now called the Brothers of Mary, were so weak, and their beginnings so humble, that unless they were abundantly fertilized by heavenly dew, they would not have been able to flourish or endure for long. It must also be admitted that only with steadfast constancy of spirit and the greatest trust in God was the pious founder able to prevent these two young men from abandoning the undertaking, for they were indeed beset by great difficulties. If you had seen them when they were first able to be together, you would have been amazed by their concord and joy. "This was the cradle of the Institute, which, to a certain extent, resembled the humble dwelling of Nazareth. These two first Brothers lived in extreme poverty; nevertheless, the peace and happiness they experienced in the service of God, under the paternal guidance of the Abbot Champagnat, made them forget the privations of this new way of life." The Servant of God immediately wanted to bring them into conformity with the norms of religious life, giving them certain rules, which, through a proper distribution of time, allocated a suitable portion of time to various tasks. He himself was constantly present among them, striving by word and example to encourage them to pursue virtue, with paternal charity, which aroused in them filial affection, or rather, veneration for him. Eager to increase the number of novices, he...

[*Latin ed. p. 240*]

240 From the Congregation of Religious, he was accustomed to pray, and especially to the Mother of God, whom he had chosen as his patroness and advocate in his works. The Queen favored the wishes of his servant, and

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sent four young men to join him, whom he, after a few months, wished to clothe in their own and uniform garments, and he decided that they should choose their own leader through secret ballots. However, the Man of God could not remain long with his most beloved pupils, as it was evident that he was drawn away by the duties of his parish ministry; therefore, he took care to visit them frequently, and diligently to instruct them in a solid and certain method of teaching. The increase in their number aroused the censure and criticism of those who accused the founder of rashness, and who said that he was elevated by a vain desire for glory. The plan of rules that he had given to the nascent community was disapproved of; the manner of life and the form of the habit were also strongly disapproved of. But Marcellinus, just as he had prudently undertaken this work with the help of God and the advice of wise men, so with equal constancy and humility he bore the accusations and reproaches, striving above all to advance the work. Therefore, understanding thoroughly that the entire undertaking depended on the proper instruction of the students, who were in some way obliged to perfect the work that had been begun, he devoted his whole soul to making them pious and suitable for the task. He began to send them on holidays to the neighboring villages, to explain the precepts of the Christian doctrine to the children of the peasants, and he endeavored to bring them up in spiritual exercises with daily care. However, he realized that, as long as everything was being created and solid foundations were being laid for the building, it was not yet advisable to pursue the proposed goal with sufficient deliberation, and he decided that he should live a common life with his young men, so that he could observe their manners and inclinations, and to guide them appropriately, and to infuse his own spirit into them. Therefore, "he left the presbytery and went to live with his poor disciples, serving them in turn as a guide and a model, sharing with them their modest meals," as the persistent Parocho recounted. He governed his Servants of God rather in the manner of a parent than of a director, and rather by example than by words, demanding nothing from them that he himself had not previously provided. Indeed, he devoted all his efforts to imbue the minds of each of them with these disciplines.

[*Latin ed. p. 241*]

From the Sacred Canons of the Ritual [1241], by which the best teacher ought to be instructed; but he was exceedingly concerned about the progress of each individual in Christian perfection: for, as we are taught by the Testament of X, "if the Servant of God desired to have good instructors, he was even more concerned to have good religious. Therefore, he wanted piety to be the soul of all the actions of the day, that work and study might be sanctified by prayer." He earnestly desired that each one should cultivate the most fervent piety towards the Blessed Virgin, and place all their trust in her. "It is Mary" (thus he addressed them)

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"who is the first Superior of this Institute; everything belongs to her, both goods and persons; it is she who must direct everything. We must be in her hands docile instruments. Woe to us, if we wanted to put our own will into it, we are only fit to spoil everything." Meanwhile, as new members joined, the Servant of God turned his mind and energies to erecting a larger house, where novices could be received, and thus again aroused the reproaches of men, since "they could not understand that he dared to undertake such a vast project without money." But what arduous works were not undertaken by the Man of God, and successfully carried out, not by human effort, but solely by divine assistance? Firmly adhering to the same principles, and inspired by the counsel of virtuous men, Marcellinus did not waver in his opinion, despite contradictions and objections, but, recognizing the will of God through legitimate superiors, whose judgment he had considered, he eagerly offered his hand to the work. Therefore, in the valley which had changed its name from the hermitage, commonly called "L'Hermitage," the General Vicar of the Archbishop of Lyons solemnly laid the foundation stone of the building to be erected, at the beginning of May of the year 1824. Who would not be astonished to see a man, abandoned by human resources and harassed by the annoyances of detractors, undertake the construction of such a large building, which could hold one hundred and fifty members? The Servant of God was poor, and his companions were poor; but he, leading by example, sought to nourish them with poverty, strengthen them with humility, and perfect them in labor. It was truly beautiful and wondrous to see the very founder, who with his companions had lived in a very inhospitable house, content with simple food, moving stones together with them, constantly engaged in the work, and urging everyone to labor. "Every day, after Mass, everyone went to work and occupied themselves in silence according to their strength. At all hours, they recited together the Acts, Volume XXIX, page CCCXL, 16."

[*Latin ed. p. 242*]

242 FROM THE SACRED RITUAL: "Gloria Patri," "V Ave Maria," and an invocation to Jesus, Mary, and Joseph. Father Champagnat gave everyone an example of work and piety. Throughout the construction period, the brothers were admirable in their piety, modesty, dedication, and activity, for as long as the construction of the house lasted. The workers were very edified by their piety, their humility, and their charity." And thus, while he was carrying out this most excellent work of humility and faith in divine Providence, to which he had entrusted himself and his own, he gained greater praise for his virtue and affection from those he had clearly equaled among his disciples. However, this, which was so far removed from the laws of human prudence, could not escape the censure of prudent men of the world, who, having previously been the most ardent in advising

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God's servant to abandon his undertaking, threatened to disperse his small community by force and to join the family, which he had so painstakingly assembled, to another institution of a similar nature that already existed. But the virtuous man, always steadfast for just reasons, suffered many adversities, even from those who he should have expected to be supporters of his work. "The Curé of the Canton joined with that of Lavalla, to give him sharp rebukes, calling his undertaking reckless and threatening to disperse his small community by force." But God's servant, neither deterred nor moved by threats, and considering no one but God as his support, faced contempt and vexation among men with equal composure, "using only patience, prayer, and trust in Mary. He ordered his small community to perform a novena of bread and water, often celebrating Mass for this intention in a chapel dedicated to the Holy Virgin. Little by little, the storm subsided, and Father Champagnat, while praising divine Providence, continued his work without ever losing heart." And God, for whose glory this holy work had been undertaken, did not fail his faithful servant: for at that time, the Most Reverend de Pins governed the Lugdunensem Diocese with apostolic authority, "the venerable Prelate, having learned of what was happening, encouraged the Servant of God, congratulated him on his dedication, and took the Institute under his protection." He was then able to devote all his efforts, along with the brothers, to the construction of the house, and, with the Lord visibly favoring the labors of his servants, the entire building, along with the chapel, was completed in a short space of time.

[*Latin ed. p. 243*]

From the Sacred Rituals, section 245, concerning the solemnities of the sacred blessing in honor of the Virgin Mary, it is recorded that on the day on which the feast of the Assumption of the same Mother of God was celebrated in the year 1825, the Reverend Dervieux, Rector of the parish of Saint Peter in the town commonly called Saint-Chamond, was appointed by the Archbishop of the diocese. Thus, the Servant of God was given the opportunity to transfer his Institute to a new building, to which a priest, Courveille, had recently attached himself, who ardently desired to be appointed "Superior"; but, having been unable to achieve this, he caused himself greater vexation. Guided by the same humility that had led the other founders to desire to relinquish the leadership, Marcellinus also gathered his brothers and persuaded them to entrust the governance of the society to one of the members. Each of them secretly cast their vote, and they elected him once, and then again. This greatly exasperated the priest Courveille, who immediately began to treat those brothers with a harsher manner who had denied him their vote. He stirred up objections and contempt against the founder, opposed him in every way, and asserted that he was completely unfit to govern the society, and sought to undermine his reputation with the Archbishop through his actions. The Servant of

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God met these things with a broken spirit, "and placed all these trials at the foot of the Cross"; however, the injustice of the vexations and the prolonged duration of the labors weakened his body, and he contracted a very serious illness, from which he recovered somewhat more through the prayers of his brothers than through the assistance of the healing arts. At that time, the sorrow in his spirit was greatly increased by the fickleness of two members, who turned their backs on him and his family. "Brother Jean-Marie, his first disciple, the one who had helped him to found the Institute, and who, until then, had been of such great help to him in the administration, left the Institute to return to the world. This defection was cruel for the Servant of God; it was followed, a few days later, by that of another brother, who was no less useful, nor less dear to him." The defection of these two confirmed in his mind the need to immediately bind the brothers to religious vows. However, he did not act without consultation, but spoke with his Archbishop about the matter, who approved of the plan, and in the year 1826, the vows were first pronounced. Meanwhile, as he observed his Institute, which was now quite extensive, he considered that the form of the habit which he had given to the brothers needed to be changed, or rather, perfected, so that it might be more...

[*Latin ed. p. 244*]

244. It would have been fitting that, according to the spirit of the Rule, poverty and humility should prevail; but complaints arose from some of the Brothers, and it was necessary to expel the most obstinate of them from the Society. However, in order to better ensure the stability of this new association, the most prudent Founder sought to obtain letters of approval from the highest civil authority, and all seemed to favor his intentions, until the sad events of the year 1830 intervened. Subsequently, he had to endure many difficulties amidst political upheavals, but these did not, in the least, weaken his constancy of spirit. The greatest fear at that time was the unjust hatred towards religious men; nevertheless, he increased the number of Brothers; soldiers were sent with the regional authorities to thoroughly investigate his house, as if they suspected that weapons were being stored there, as if they were enemies! But the man of God gently received the investigators, and won the favor of the authorities. Thus, all accusations were refuted, and the force of the storm was miraculously transformed into a most excellent commendation of his work by the Lord. Always striving to strengthen the growth of the Society, which he held so dear, and desiring to promote the prosperity of new schools, he again endeavored to obtain, both then and later, royal recognition. However, he twice visited Paris in the years 1836 and 1838, but this did not greatly distress him, nor did it weigh down his spirit, for, as the Witness XIV recounts, "The Servant of God accepted this new trial with perfect resignation, and went to console and strengthen himself at the feet of Our Lord in the Most Holy Sacrament

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of the Altar." As the work of the Servant of God grew, and more and more houses and schools were founded, it was necessary to establish appropriate laws for the internal administration of these institutions. Twenty years of experience had demonstrated the suitability of the rules that the pious Founder had carefully devised from the very beginning of the Institute; but the most prudent man did not wish to publish them until the opinions of the older Brothers had been considered and their agreement obtained. With joy in his heart, at the beginning of the year 1837, he published the rules of his Institute, and, on the twenty-fourth day of September of that same year, he received an even greater announcement: the Apostolic approval of the Society of the Marist Fathers, in which he expressed his religious vows with feelings of gratitude and devotion.

[*Latin ed. p. 245*]

From the cited document, there exists a record which most clearly demonstrates that the Servant of God, in the founding of the Congregation of the Marist Fathers, especially desired that the Marian devotion be fostered, to which he had devoted himself and all that he possessed; and although he had constantly dedicated his efforts and energies to another work, which must be considered as his twin endeavor, he never deviated from this purpose, and he was always closely united with those Fathers in a bond of remarkable harmony and charity. He frequently assisted the moderator of those Fathers, Father Colin, with counsel and encouragement, and with his support and guidance, in the year 1839, when he began to labor with a weaker constitution due to the constant and arduous labors he had endured, he sought a successor to himself in the office of superior, through the votes of the brethren. However, he did not wish to interrupt his active life, and after scarcely a few days had passed, he went to a nearby town, in order to provide spiritual exercises for the students of that house, from which he left a most cherished memory; indeed, "the air of goodness and holiness that appeared on his face made a strong impression on the young men; all wanted to speak with him. They said among themselves: 'He is a Saint!'" Then, when Bishop d'un en si Augustinus requested that he grant himself some rest, he opened another house of formation in the fortress commonly called Vauban. This was the last work of the Servant of God, for his bodily strength had reached its ultimate limit. As his health worsened, and he was compelled to lie in bed, he received the Sacraments of the Church before the brethren with incredible fervor of spirit, and he gave them paternal words of counsel, and he constantly blessed them. Having presented a most excellent and constant example of patience, piety, and submission to the divine will, he reached the sixth day of June of the year 1840, on which day he exchanged the sorrows of this world for eternal

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blessedness, having lived fifty-two years.

[*Latin ed. p. 246*]

246 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH: Various regulations are prescribed for observance by missionaries in letters or documents sent to the Sacred Congregation for the Propagation of the Faith, as well as to the Ordinary of the missions, who are dependent on the Sacred Congregation. Since the number of affairs that the Sacred Congregation for the Propagation of the Faith must handle concerning the missions entrusted to it increases daily, it is most desirable that those things which delay the progress of business be removed. Therefore, the undersigned Archbishop, Secretary of the Sacred Congregation for the Propagation of the Faith, in accordance with the opinion of the Most Eminent Cardinal Prefect of the same Sacred Congregation, deems it necessary to judge certain things, which experience has shown to be less suitable, and requests the Reverend Local Ordinaries to, with the wisdom and zeal which they possess, observe the same in matters concerning this Sacred Congregation, as they deem fitting. And above all, it is of the greatest importance that not only letters sent to this Sacred Congregation, but also the documents attached to them, be written in Latin, or in Italian or French, since knowledge of other languages is not yet commonly available, and the work of interpreters often takes longer and is not always sufficient for *Segura de Lon*. Furthermore, it often happens that the letters received are written with such a poor hand that it is very difficult even for experts to read them, and this requires a great waste of time and effort. Sometimes, papers of blue, or very dark, or transparent colors are used, and the ink is of a nearly white color, so that the reader's eyesight is unfairly strained. Therefore, it is urgently requested that such obstacles be removed. It is also not inappropriate to note that, in letters sent to the Sacred Congregation or to His Holiness through the Sacred Congregation, the external form sometimes leaves something to be desired, in order to be more in keeping with the dignity of the men to whom they are presented. Furthermore, the pages of letters and documents are often written in such a way that the order of writing on one page is reversed on the next, and therefore, when these pages are bound into books for their preservation in the Archive, they must be turned upside down from the bottom for each page that is read, which causes unnecessary inconvenience and annoyance to the reader. Finally, another inconvenience sometimes occurs, namely, that the Sacred Congregation, in receiving letters, is sometimes...

[*Latin ed. p. 247*]

247. When a solution for the price of transmission is confidently provided by the senders, a double tax must be paid; thus, each year a consid-

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erable sum of money is withdrawn from the daily needs of the Missions. To effectively remove all these inconveniences, the undersigned Secretary believes it is fitting to make known, through the present letter, the desire of this Holy Council, which has been made clear to him on more than one occasion, and he again requests that the letters and documents sent to this Holy Congregation be: 1. Written in the Latin language, or at least in Italian or French, as was stipulated by circular letters of this Holy Congregation dated February 1, 1892. 2. Written in a legible script, especially with regard to the names of people and places, and that they prefer a suitable format for the dimensions of the paper, which should be white paper and black ink. 3. That the order of writing the pages be the same as that used in books that are printed. 4. That the fees prescribed by law in each region for the sending of letters be paid exactly by the senders. Given in Rome, from the offices of the Holy Congregation for the Propagation of the Faith, on May 18, 1896.

FROM THE HOLY CONGREGATION FOR THE PROPAGATION OF THE FAITH

AUGUSTINUS CIASCA,

ARCHBISHOP OF LARISSA,

Secretary.

FROM THE HOLY CONGREGATION OF THE SACRED ROMAN AND UNIVERSAL INQUISITION.

It is permissible to use butter as a condiment when, by the indulgence of the Holy See, the use of condiments made from fat is permitted.

In the General Congregation of the Sacred Roman and Universal Inquisition held on Thursday, May 13, 1896, the Most Eminent and Reverend Cardinals, Inquisitors General, considered the following question: Whether, on days of fasting consecrated by the Holy See, in which the Apostolic permission for the use of condiments made from fat is granted, it is also permissible to use butter as a condiment. And after careful deliberation, and with the previous decisions of the Holy See on this matter also before their eyes, they decreed: To ask for the grace of the Holy Father.

On the following Saturday, May 15 of the same month, the Most Holy Father Leo, by divine providence, Pope XIII, in an audience with the Reverend Father, the Assessor of the Holy Office, graciously agreed to the request, with the support of the Most Eminent Fathers.

JOSEPHUS MANCINI,

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Notary of the Sacred Roman and Universal Inquisition.

[*Latin ed. p. 248*]

248 APPENDIX II EXHIBITING DECREES FROM THE HOLY SEE WHICH, THOUGH ISSUED BY THE APOSTOLIC AUTHORITY, HAVE REMAINED HIDDEN FOR SOME TIME, PRESENTED FOR THE BENEFIT OF THE READER.

S. C. S. Officii, July 4, 1883. A doubt concerning profit derived from loans, which must be collected according to civil law. In Naila, should the faithful be disturbed who receive the entire civil tax in the loan, that is, all the interest permitted by the law, or, at least, in the provinces where a smaller interest is generally taken, should they be advised, and even obligated, not to receive more than what is commonly desired, which is, on average, 15 percent?

R. Those who receive profit from a loan in the quantity that is permitted by law, commonly accepted, and approved by prudent and conscientious men, should not be disturbed, provided they are willing to adhere to the mandates of the Holy See.

S. Poenit. Ap., April 18, 1889. A doubt concerning usury which appears to be excessive. The Bishop N. N. humbly submits to the authoritative judgment of Your Eminence the following case, which is unfortunately frequent: usury of ten and of one hundred percent is collected, even from good Christians, in view of the almost equal profit that would always be obtained with greater promptness from the same capital, if it were invested in new banking institutions. Furthermore, this aforementioned percentage is, most often, sought even after deducting movable property, due to the fear of a burdensome fine to which the creditor would be subject, in the easy event of a necessary public notice of the creditor's title in order to repay the borrowed sums. And it is to ensure peace of conscience that the undersigned implores the oracle of this Tribunal.

R. Since it is dangerous to set a rule for taxing the fruit of money, the Reverend Father Bishop, the speaker, in each individual case, will decide according to the common practice preserved by prudent and conscientious men, with respect to the specific places and times.

[*Latin ed. p. 249*]

APPENDIX II. 249 Instruction of the Holy Congregation for the Propagation of the Faith, 1873. — Collection of resolutions concerning profit from loans. It frequently happens that questions concerning profit from loans are brought before the Apostolic See, which the Roman Congregations have resolved, providing for similar cases. In order that Superiors of Missions may have the necessary knowledge of what has hitherto been decreed on this matter, it seemed opportune to the Holy Council, for the propagation of the Christian Name, to publish all the aforementioned resolutions to-

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gether with the Constitution of Pope Benedict XIV. It was also decided to send these to all Bishops, Vicars, and Apostolic Prefects dependent on the same Holy Congregation.

I. — The Holy Congregation of the Holy Office, dated January 13, 1780, to the Reverend Father and Doctor, Apostolic Vicar N. N. — "Since equality is required in contracts, so that they may be just, nothing is to be taken in a loan, as is often defined, beyond the principal sum. If, however, the lender should suffer a loss, or if a danger threatens him of losing the principal sum, or of incurring unusual labors for its restoration, he may, under certain conditions, demand compensation for these, always bearing in mind two conditions: the first, that there truly exists one of these circumstances; the second, that nothing more be demanded than what is truly required. Therefore, all contracts are deficient in the rule of justice, and are subject to restitution, in which either interest is pretended to be compensated, or more is demanded than is required for adequate compensation. It is therefore clearly imprudent and unlawful, and a manifest committal to the injustice, for those who, because of the danger which we have mentioned, frequently occurs in such cases, always and invariably demand a profit, as if the danger always intervened, and when it has occurred, they demand the same compensation: nor can they be excused for taking usury less than that permitted by the law of the kingdom; since it is not right that something should be considered just, merely because it deviates less from justice, unless it is entirely conformed to the form of justice, nor should human actions be judged by human law, but by the divine natural law, which is steadfast in equity. Only those act rightly who, considering the individual circumstances, demand compensation only when, in fact, the danger intervenes, and do not seek any other compensation than that which corresponds to the gravity of the danger, which should be estimated by the prudent judgment of wise men.

II. — The Roman Inquisition, year 1784, March 18, to the Apostolic Vicar D. D. N. — Concerning the question of loans. — "And in the first place, it is established by reason that in a loan, nothing is to be taken beyond the principal sum."

[*Latin ed. p. 250*]

250 APPENDIX II. principal. If, however, something is received by reason of a peril probably imminent, those lending money are not to be disturbed, provided that account is taken of the quality of the peril, and of its probability, and that a proportion is maintained between the peril and that which is received. These very words are defined by the Sacred Congregation of the Propagation of the Faith on September 12, 1645. The decree concerning missions to China, which is appended here (1), is cited. It may now be asked what kind of peril should be, and what its reason and nature, so that, with this concurrent title, someone may receive something beyond

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the principal sum. In this matter, it must be held for certain that not any peril whatsoever is to be considered sufficiently apt and suitable, so that some profit may be received from the loan. For, since the title, from which a just and legitimate cause arises, to demand something more beyond the principal sum, must always be external, and not connected with or inherent in the nature of the loan, it clearly follows that if (1) S. C. de Prop. Fide, September 12, 1645. - Miss. Sin. - 1. In the Kingdom of China, it is established by law that thirty percent is to be taken in loans, without regard to lost profit or emerging damage. It is asked whether it is permissible for the Chinese to take the aforementioned thirty percent for their loans, even if no lost profit or emerging damage occurs, according to the law of the Kingdom. And the cause of doubt is that there is some peril in recovering the money, namely, that the one who receives the loan may flee, or may delay in paying, or may need to reclaim it before a judge, or for other similar reasons. 2. Throughout the Kingdom of China, it is customary to find public houses dedicated to lending, in which public usurers often lend money, taken with interest, under the security of pledges; but under this condition, that they receive only one ducat each month; and if, after the lapse of so many years, the owner of the pledge does not return, having paid the principal sum with interest, he immediately loses the action and the ownership that he had in his pledges. These houses are necessary to the state, and although usurers may wish to abandon the usurious life, they are compelled by the authority of the judge not to desist from the aforementioned interest. It is asked whether, if such usurers wish to be converted to the faith, they can be baptized while remaining in their usurious state for the aforementioned reason; or what should be done in such a case. R. To 1. By reason of the loan, nothing is to be received beyond the principal sum, immediately and precisely. If, however, something is received by reason of a peril probably imminent, as in this case, those lending money are not to be disturbed, provided that account is taken of the quality of the peril and of its probability, and that a proportion is maintained between the peril and that which is received. To 2. Chinese remaining in the usurious state cannot be baptized; but if they are compelled by the authority of the judge to lend their own money, they can receive something beyond the principal sum, even with a pledge, both by reason of the care in the custody of the pledges, and also of lost profit and emerging damage; but at the time appointed, if anything remains from the sale of the pledges beyond the principal sum, and the profit justly acquired for the aforementioned reasons, it must be returned to the owner of the pledge.

[*Latin ed. p. 251*]

APPENDIX II. 251 The danger arises solely from the surrounding circumstances, which are common to all those engaged in lending here, and cannot be separated from the very nature of the loan; therefore, any profit

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derived from the loan, in such circumstances, cannot possibly be cleansed from the stain of usury. Therefore, when plague, fires, the persecution of the Turks, and other misfortunes, which, although more frequent in Constantinople, are always present in any city among lenders, it is most important to take care that, on account of this common danger, which the very force and nature of the loan implies, nothing beyond the principal is demanded in the loan. It seems rather advisable to investigate, when the danger of losing the principal is imminent, either through the fault of the borrower himself, if he is aged, deceitful, or unreliable, and may deceive the creditor through flight or malicious delays, or when, apart from the fault of the borrower, other dangers exist for the creditor due to the circumstances of place, time, and persons, which greatly distress and concern him in recovering the principal. Although, indeed, dangers arising from the borrower's fault should always be considered more serious, nevertheless, in all these cases, it is very difficult to generally determine how, and to what extent, such a danger can be estimated, from which a legitimate title is granted to the lender to obtain profit beyond the principal. It is incumbent upon the prudence and teaching of confessors to assess each matter and weigh its importance: they must carefully examine each case, inquire into the quality and probability of the danger, see if all danger is absent through the security of collateral, observe the proportion between the danger and that which is permitted to the lender to profit beyond the principal, consult approved authors, and especially adhere to the opinions and principles approved by this Apostolic See, both in the aforementioned decree of the Holy Congregation of Propaganda Fide of the year 1645, and in the Encyclical Letter of Benedict XIV, published in the year 1745, a copy of which is attached here (1).

(1) Encyclical Letter of Benedict XIV, November 1, 1745. "It has reached our ears, due to a new controversy (namely, whether certain contracts should be considered valid), that some opinions have been spread throughout Italy, which seemed to be contrary to sound doctrine; and since we considered it our duty as part of our Apostolic office to provide a remedy, lest such an evil, through the passage of time and silence, acquire more strength; and to prevent access to it, lest it spread more widely and undermine the still-safe state of Italy." "I. Therefore, we have adopted the method and counsel that the Apostolic See has always used; for we have explained the whole matter to some of our Venerable Brothers, Cardinals of the Holy Roman Church, who are highly esteemed for their knowledge of sacred theology and their study and expertise in canon law. We have also received several Regulars outstanding in both disciplines, some of whom are monks, others are from the Order of Friars Mendicants, and still

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others are from the Clerics Regular."

[*Latin ed. p. 252*]

252 APPENDIX 11. III. - Pope Pius VIII - during an audience with the Assessor of the Holy Office, regarding doubts raised by the Bishop of Rennes. - "The Bishop of Rennes in France presented to the Sacred Congregation of the Inquisition, stating that he did not believe that all confessors in his diocese held the same opinion regarding the profit derived from money lent to merchants on loan; we also appointed a jurist, learned in both laws, and experienced in legal matters. We set the fourth of July, which has recently passed, as the date for all of them to appear before Us, so that we might explain the nature of the entire matter; and we found that they were already aware of and had considered it."

"2. After this, we ordered that, freed from all partiality and all cupidity, they should carefully examine the entire matter and write down their opinions; however, we did not ask them to render a judgment on the contract that had initially caused the dispute, since there were not sufficient documents available that were necessary for that purpose; but rather, that they should establish a firm doctrine on usury, which seemed to be harmed by certain things that had recently begun to be spread among the people. All were ordered to do so: for they declared their opinions publicly in two Congregations, the first of which was held before Us on July 18th, and the second on August 1st, which have recently passed; and finally, they submitted their opinions in writing to the Secretary of the Congregation."

"5. Furthermore, they unanimously approved the following: I. That kind of sin, which is called usury, and which has its proper place and location in a loan contract, consists in the fact that someone desires to receive more back from the loan itself, than what was received, when the loan itself only requires that an equal amount be returned. Therefore, any profit that exceeds the principal is illicit and usurious."

"II. Nor can this vice be purged by any amount, whether that profit is not excessive, but moderate; whether it is not large, but small; or whether the person from whom that profit is demanded for the sake of the loan is not poor, but rich; nor because the sum lent to him will not be left idle, but will be used to increase his fortune, or to acquire new property, or to engage in speculative ventures. For he is proven to violate the law of the loan, which necessarily rests on the equality of what is given and what is received, who, once that equality has been established, still dares to demand something more from anyone, by virtue of the loan itself, to whom an equal amount has already been given; and therefore, if he receives it, he will be obligated to return it, by virtue of the obligation of justice, which is called commutative, and which, in human contracts, requires that the equality of each party be observed and, if not perfectly observed, be restored."

"III. However, it is not denied that, sometimes, certain other 'titles,' as

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they say, can occur together with a loan contract, and that these titles are not at all inherent or intrinsic to the nature of the loan, from which a perfectly just and legitimate reason arises for demanding something more than what is due on the loan. Nor is it denied that, often, money can be placed and invested by one and all, through contracts of a completely different nature from that of a loan, and that it can be used properly, either to acquire profits for oneself, or even to engage in legitimate commerce and business, and to receive honest profits."

"IV. As for how, in all these different kinds of contracts, if equality is not observed in each, whatever is received in excess is, if it is less, not usury (because every loan, whether open or hidden, must be free from it), but certainly something else..."

[*Latin ed. p. 253*]

APPENDIX II. 25. In order that they may flourish. The meaning of the encyclical letter is hotly debated. Arguments are presented on both sides to support the opinion that each holds, whether it favors or opposes such a practice. It has been shown that complaints, disagreements, and the denial of the Sacraments to many, are truly injustices, and that the burden of restoring order must be borne equally; thus, if everything is properly conducted and weighed in the scales of justice, there is no doubt that in many of these contracts, legitimate means and reasons exist to preserve human commerce and to promote profitable transactions for the public good. Let it not be thought that Christians can flourish through usury or similar injustices; rather, we learn from the very oracle of God that "justice exalts a nation, but sin makes a people miserable."

V. But it must be carefully noted that one will always find, and everywhere, those who falsely and rashly persuade themselves that, either together with a loan, there are other legitimate titles, or even without a loan, there are other just contracts, by which, whenever money, grain, or anything of that kind is lent to another, it is always permissible to receive a moderate return, beyond the principal, while preserving the integrity of the entire transaction. Those who believe this are undoubtedly opposed to divine teachings, the judgment of the Catholic Church on usury, and even to common human sense and natural reason. It cannot escape anyone that in many cases a man is obligated to help another with a simple and naked loan, especially when the Lord Christ Himself teaches: "If anyone wishes to borrow from you, do not turn away." And similarly, in many circumstances, besides one loan, there may be no other true and just contract to which one can resort. Therefore, whoever wishes to consult his conscience, should first diligently inquire whether a just title other than a loan, or a just contract other than a loan, actually exists, so that the profit he seeks may be free from all fault and rendered without any blemish.

4. These words encompass and explain the opinions of Cardinals, the-

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ologians, and most learned men of Canon Law, whose counsel we sought in this very serious matter. We, too, have devoted our private study to the same cause, before, during, and after the Congregations were held; for we have carefully examined the opinions of the most distinguished men, as we have just mentioned. Since these things are so, we approve and confirm all that is contained in the opinions expressed above; for it seems that all the writers, professors of Theology and Canon Law, almost conspire to present more testimonies from the Sacred Scriptures, decrees of our predecessors, the authority of the Councils, and the Fathers, to confirm these same opinions. Moreover, we have clearly learned of the authors to whom contrary opinions must be attributed; and also those who support and defend them, or who seem to offer them an opportunity or pretext; nor are we unaware of how wisely and seriously theologians in those regions where such controversies originated have defended the truth.

5. Therefore, we have sent these encyclical letters to all the Archbishops, Bishops, and Ordinaries of Italy, so that this may be known to you, Venerable Brother, and to all; and whenever you celebrate synods, address the people, and instruct them in sacred doctrines, nothing should be presented that is contrary to the opinions we have just recounted. We also strongly urge that everyone take care that no one in your dioceses dares to teach or preach contrary things. But if anyone should refuse to obey, we declare him subject to and liable for penalties.

[*Latin ed. p. 254*]

254 APPENDIX II. These individuals, clinging to their wealth, cause countless losses of souls. To remedy these losses, some confessors believe they can maintain a middle ground between the two opinions. If anyone consults them about such a matter, they try to dissuade them. They cite the Sacred Canons, stating, "Those who despise and violate the mandates of the Apostles." "§. 6. Regarding the contract that sparked these controversies, we make no definitive ruling at present; nor do we decide definitively regarding other contracts, concerning which theologians and interpreters of Canon Law hold divergent opinions. Nevertheless, we believe it is necessary to encourage your piety and devotion, so that you may demand the enforcement of what we present here." "§. 7. First, we must show to our people, in the most serious terms, that the stain and vice of usury are vehemently condemned by divine law, that it indeed takes on various forms and appearances, so that the faithful, restored to freedom and grace through the Blood of Christ, are again plunged into extreme ruin. Therefore, if they wish to invest their money, they must be very careful not to be swept away by the insatiable greed of all, but rather seek advice from those who are distinguished by their doctrine and virtue above others." "§. 8. Secondly, those who are so confident in their own abilities and wisdom that they do not hesitate to give an opinion on these matters (which,

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however, require considerable knowledge of Sacred Theology and Canon Law) must keep far away from the extremes, which are always vicious. For some judge these matters with such severity that they accuse any benefit derived from money as illicit and connected with usury; while others are so lenient and remiss that they consider anything obtained as free from the shame of usury. They should not adhere too rigidly to their own private opinions; but before giving an answer, they should examine more writers, especially those who are most esteemed among others; then they should adopt those positions that are clearly confirmed by reason and authority. If a dispute arises when a particular contract is being examined, no insults whatsoever should be directed at those who follow a different opinion, nor should that opinion be marked with severe censure, especially if it is not lacking in reason and the testimony of eminent men; for reproaches and injuries break the bond of Christian charity, and cause the greatest offense to the people, and scandal." "§. 9. Thirdly, those who wish to demonstrate that they are free from all the vices of usury, and who wish to lend their money to others in such a way that they receive only a legitimate profit, should be advised to declare the contract beforehand, to explain the terms, and to specify the profit they expect from that money. This contributes greatly not only to avoiding anxiety and scruples of the mind, but also to proving the contract in the external forum. This also prevents disputes, which have often been stirred up, so that it may be clearly apparent whether the money, which appears to have been properly given to another, actually contains a hidden usury." "§. 10. Fourthly, we urge you not to give credence to the empty words of those who claim that the question of usury is being raised at this time only in name; when, in fact, the profit compared to the money given in any way is very great. For how false and contrary to truth this is, we can clearly see if we consider that the nature of one contract is entirely different from the nature of another; and that the consequences that follow from different contracts differ greatly from each other. The distinction is perfectly clear between—

[*Latin ed. p. 255*]

APPENDIX II. 255. The penitent perseveres in the opinion that it is permissible to lend money to merchants by means of a mutual agreement, and he argues that many have the opinion that such a loan is permissible, and furthermore, that it has not been condemned by the Holy See, after it had been consulted on this matter not once, but repeatedly. Then, these confessors demand that the penitent promise to obey the judgment of the Supreme Pontiff, whatever it may be, with filial obedience, if he should intervene; and, having obtained this promise, they deny him absolution, even though they believe the opinion contrary to such a loan to be more probable. If the penitent does not confess to having gained profit from money lent in this manner, and appears to be in good faith, these confessors, even if

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they know from other sources that he has received or is currently receiving such profit, absolve him, without making any inquiry about the matter, fearing that if he were warned, he might refuse to restore the money or abstain from such profit. The aforementioned Bishop of Rennes inquired: I. Whether it is possible for these later confessors to justify their actions. - II. Whether he can urge other, stricter confessors whom he consults, to follow the actions of these confessors, until the Holy See gives an explicit judgment on this matter.

[Seal] C. L. The Bishop of Rennes. "On Tuesday, the 18th of August, 1830, in a private audience, His Most Holy Lordship Pope Pius VIII, after hearing the report of the aforementioned doubts, together with the opinion of the Most Eminent Cardinals Inquisitors General, responded: To I. There is no need to be concerned. - To II. Provision is made in the first [response]."

[Seal] S. Inquisitionis. For the Reverend Father Nicholas Soldini, Notary of the Holy Roman and Universal Inquisition, Angelus Argenti, Secretary. IV. — From the Sacred Penitentiary, regarding the doubts of the Reverend Father Denavit, Professor of Theology at the Seminary of Saint Irenaeus in Lyons.

"When doubts concerning the matter of usury are presented to the Sacred Penitentiary, it always refers to the doctrine of the Supreme Pontiff Benedict XIV, which is truly clear and distinguishes between the fruit that is lawfully taken from money, and which can therefore be retained in both forums; and the fruit that is illicitly obtained from money, and which is therefore subject to judgment in both forums. Therefore, it is clear that the question of usury is not a futile one at this time, because, in most cases, some profit is taken from the money that is given to another."

"§ 11. We have considered it necessary to indicate these things to you, hoping that you will order the execution of whatever is prescribed by us in these letters. We also trust that you will seek appropriate remedies, should disturbances arise in your diocese concerning this new controversy about usury, or if corrupt practices are introduced to undermine the purity and integrity of sound doctrine. Finally, we impart the Apostolic Blessing to you and to the flock entrusted to your care."

[*Latin ed. p. 256*]

256 APPENDIX. II. It is clear to those who wish to examine it in good faith. However, there are certain presbyters who contend that it is permissible to receive an actual sum of five percent, solely by the force of the Prince's law, without any other title or loss incurred or profit ceasing: because, they say, the Prince's law is a legitimate title, since it transfers ownership by prescription; and thus they completely nullify Divine Law and Church law, which prohibits usury. Given these circumstances, the undersigned Orator, believing that it is in no way permissible to deviate from the doctrine of Benedict XIV, denies sacramental absolution to those

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presbyters who contend that the Prince's law is a sufficient title for receiving something beyond what is due, without any other title, loss incurred, or profit ceasing. Therefore, the undersigned Orator humbly requests that the following questions be answered:

I. Whether it is permissible in conscience to deny absolution to the aforementioned presbyters.

II. Whether one ought to do so.

"Lyons, 25th of May, 1830. - Denavit Professor."

The Sacred Penitentiary, after carefully and maturely considering the questions proposed, decided that: "The presbyters of whom we are speaking should not be disturbed until the Holy See has issued a definitive decision, to which they are prepared to submit; and therefore, nothing should prevent their absolution in the Sacrament of Penance."

"Given at Rome, in the Penitentiary, on the 16th of September, 1820.

"E. Card. De Gregorio, Major Penitentiary. - F. Fricca, Secretary of the Sacred Penitentiary."

V. The Sacred Penitentiary communicates to the Bishop of Verona the answers previously given by the Most Holy Office.

The Sacred Penitentiary, having read the exposition presented by the Most Reverend Father Bishop of Verona in the aforementioned petition of the first day of the last month, refrained from resolving the four questions therein proposed, but communicates to the Orator the answers given by the Most Holy Office regarding certain other matters pertaining to the same subject. These are as follows:

I. Whether a confessor can, in conscience, deny absolution to presbyters who contend that the Prince's law is a sufficient title for receiving something beyond what is due, without any other title, loss incurred, or profit ceasing.

II. Whether one ought to do so.

It is answered: Regarding both questions, one should not disturb them, as long as the Holy See has not issued a definitive decision, to which they are prepared to submit; and therefore, nothing should prevent their absolution in the Sacrament of Penance.

[*Latin ed. p. 257*]

APPENDIX, p. 257. Further Questions: - "I. Can that confessor be absolved, who, although knowing the definitions of Benedict XIV and other supreme Pontiffs concerning usury, teaches that it is permissible to receive, beyond the principal, a profit of five percent from those who lend money to the wealthy or merchants, even from those who have no title whatsoever to the loan except that of civil law? - II. Does a confessor sin, who, in good faith, absolves a penitent who demands a profit according to the law of the land, without any external profit being relinquished or any damage arising,

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or any extraordinary danger?"

"It is answered: Regarding the first question, the confessor, concerning whom the doubt is raised, should not be troubled until the Holy See has issued a definitive decision, to which he is prepared to submit; therefore, nothing should obstruct his absolution in the sacrament of Penance. - Regarding the second, provided that the penitents are prepared to abide by the mandates of the Holy See."

Further Questions: "A certain man was convinced that the Encyclical of Benedict XIV did not prohibit the profit received from the lending of money, according to the provisions of civil law. His heirs ask: I. Whether he correctly understood the Encyclical. II. Even supposing that he misunderstood it, whether, being convinced that he understood it correctly, they can consider themselves exempt from all compensation."

"It is answered: Regarding I. They should acquiesce, provided they are prepared to abide by the mandates of the Holy See. - Regarding II. Provided as in the first."

Further Questions: - "I. Can the conduct of those confessors be justified, who, while holding what appears to be the more probable opinion contrary to profit from money lent to merchants by loan, absolve penitents who are receiving such profit in a manner that enriches them, when these, objecting that the opinion favoring profit has not been condemned by the Holy See, nevertheless promise to obey the judgment of the Supreme Pontiff, if it should intervene; and similarly, when penitents, receiving profit in good faith, do not confess it, although others know that they are receiving such profit as mentioned above, and this matter is not brought up in questioning, when they fear that the penitents, being warned, would refuse to restore or abstain from such profit? - II. Can a Bishop urge stricter confessors, to whom those seeking counsel come, to follow the conduct of former confessors, until the Holy See renders an explicit judgment on this matter?"

"It is answered: Regarding I. They should not be troubled. - Regarding II. Provided as in the first."

Given in Rome, in the Holy Penitentiary, on the 14th of August, 1831. - V. D. Solimei, Secretary of the Holy Penitentiary. VI. - Approved by the General Congregation of the Holy Office under Pope Gregory XVI. - "Questions from the Acts, Volume XXIX, page 341, number 17."

[*Latin ed. p. 258*]

258 APPENDIX II. Chapter of Locamo: - Most Blessed Pache - I! The Chapter of this Collegiate Church of Locamo, in the diocese of Como, in Swiss territory, possesses the majority of its endowments in money, derived principally from the commutation of tithes, which occurred by governmental decree. This money must be employed, in order to derive profit from it and to fulfill the obligations attached to the benefices. Due to the cir-

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cumstances of the times and the place, either it is not possible to invest this aforementioned money in stable, profitable assets, which are very scarce in proportion to the population; or, even if such assets were available, they would yield only two and a half percent annually, which would excessively diminish the already meager endowments. Loans are prohibited by these municipal laws; and they are not secure, since there is no office of mortgages in these parts to ascertain the freedom and sufficiency of the funds upon which loans are to be established. Furthermore, those who, for their own benefit, request the money, ordinarily refuse to submit to loans, and prefer to receive it as a loan, contributing four or five percent annually. The following questions are posed: "I. If the necessary honest sustenance of the beneficiaries, which must come from the fruits of the capital of these endowments, is, in such circumstances, a sufficient and equivalent title to those already approved by the Church, so that it is permissible to enter into such a contract to give the endowment money of these benefices at an interest of four or five percent, with a mortgage on stable assets and a guarantee from known and solvent individuals, in order to ensure the perpetuity of the endowments." "II. If this title, supposing it to be admissible, can be extended to favor also churches, monasteries, and other pious institutions, as well as orphans and other individuals who find themselves in the same circumstances described above and need to make their money profitable in order to sustain themselves honestly." "III. If the civil laws and procedures, which now generally approve such contracts and enforce them, and the common tacit consent of the people, which, through the established custom of centuries, seem to have substituted them for other, more complicated and difficult contracts, are sufficient to justify them." "IV. If the authority of our Ordinary, and of many wise and well-intentioned ecclesiastics, who, having considered the aforementioned circumstances, favorably opine and approve such contracts, is to be trusted." "V. What consideration should be given to the reasons adduced by Scipione Maffei in his three books – On the Employment of Money – dedicated to Benedict XIV, and approved by the Inquisitor of Padua in the year 1744."

[*Latin ed. p. 259*]

APPENDIX II. 259 « VI. Whether the Bull – De usuris – promulgated by the blessed memory of Benedict XIV in the year 1745, probably in consequence of the work of Maffei, in number 2 thereof, and in the article – de contractu autem, – and following, can be interpreted favorably to such contracts. » « VII. Assuming that such contracts are illicit, what is to be done concerning those already made, and the fruits already received? » « VIII. Can such contracts be rendered licit, at least by assuming the fortuitous danger of the fund assigned as pledge, with the due stipulations, as in the case of *censi*? » « The undersigned orators humbly desire and implore Your Holiness for a clear and opportune decision regarding these doubts,

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for the regulation of their own and others' consciences, which are greatly agitated in this matter. – Locamo, 13 May 1831. » « The agent adds the general and very great scarcity of currency or funds, which are ordinarily in the possession of only a few. Deprived of money, the possessors are mostly unable to engage in commerce and the arts; having consumed their few capital resources, they would easily be reduced to poverty. The others, lacking their own money or stable funds to exchange for cash, would be unable to benefit from *industria*. Lacking charitable loan institutions (*Monti di Pietà*), they would often be forced to sell their small paternal inheritance, and often at a very low price, in their necessity. The agitation of consciences is exceedingly great. Therefore, considering all things, several Ordinaries have ruled in favor. Otherwise, a general disorder would arise, and a total impediment to business and industry. » « Thursday, August 31, 1831. – Following the aforementioned petitions of the Collegiate Chapter of Locamo, which had already been distributed through the hands of the Consultors, the Most Eminent and Reverend Lords said: » Regarding I, II, III, and IV: They should not be disturbed, and they should acquiesce, provided they are prepared to abide by the mandates of the Holy See. » Regarding V, VI, VII, and VIII: They should consult the Encyclical of Benedict XIV. It has scarcely arrived, and approved authors should be consulted. » « Thursday, September 7, 1831. – His Most Holy Lordship, Pope Gregory XVI, in his customary audience granted to the Reverend Fathers, Assessors of the Holy Office, approved the resolutions of the Most Eminent Lords. » « VII. – To the Sacred Penitentiary, concerning new inquiries from the Reverend Professor Denavit. – « The orator below again presents to the Sacred Penitentiary: From the response of the Sacred Penitentiary to the orator below, dated September 16, 1830, priests who contend… »

[*Latin ed. p. 260*]

260 APPENDIX II. It is the opinion of theologians that the law of the prince constitutes a sufficient and legitimate title for receiving something beyond the principal in a loan, without any other title generally accepted by theologians, until the Holy See issues a definitive decision, to which they are prepared to submit: and to this response, I humbly and willingly assent. However, with due regard to the aforementioned response of the Sacred Penitentiary, after consulting with approved authorities, and considering the teachings of almost all the seminaries of Galliae, and especially those directed by the priests of the Congregation of Saint Sulpitius, the opinion that rejects the title of civil law as insufficient appears to be far more probable, safer, and the only one to be followed in practice until the Holy See defines the matter. Therefore, to those faithful who seek my counsel as to whether they can receive an increase on a loan, and who have no title that is generally accepted by theologians, other than the title of civil law, I respond that they cannot demand said increase, and I deny sacramental absolution

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to those who demand it. Likewise, I deny absolution to those who, having received such interest, that is, by virtue of the sole title of the law, refuse to return it. - It is asked: I. Whether I am being too harsh and severe towards such faithful. II. What course of action should be followed in practice towards the faithful, until the Holy See issues a definitive judgment. "Lyons, September 24, 1831. - Given by the Professor. "The Sacred Penitentiary, having considered the doubts presented by the petitioner, responds: - To I. Affirmative: since from the response given by the Sacred Penitentiary, it is clear that such faithful, who act in good faith, should not be disturbed. - To II. It is recommended that the petitioner, as he stated in his previous petition to the Sacred Penitentiary on September 1830, strive to conform his actions in practice to the aforementioned response. - Given in Rome, in the Sacred Penitentiary, on November 11, 1831. A. F. de Retz, Regent of the Sacred Penitentiary. F. Fricca, Secretary of the Sacred Penitentiary." VIII. - The Sacred Penitentiary's response to the questions of John Anthony Avvaro, Doctor of Sacred Theology and Royal Professor. "Most Reverend and Reverend Lord. - The royal law of Piedmont universally and without any restriction permits that anyone who lends money to another may stipulate and demand an annual increase of 5 for 100 above the principal. Hence, in the diocese of Pinaroliensis and in other neighboring dioceses, a very serious controversy is raging among theologians, as to whether, in cases in which, on the one hand, there is no title for loss of profit, or for damage incurred, or for extraordinary risk of losing the principal, and on the other hand, the precept of charity towards one's neighbor does not obligate one to lend by a simple and naked loan, whether it is permissible for the lender to receive and retain that increase. For some consider that increase to be entirely usurious and illicit, while others maintain that it is entirely free from any taint of usury."

[*Latin ed. p. 261*]

APPENDIX II. 261. All boast of adhering to the authority of Benedict XIV, or at least of not opposing him in any way. Indeed, the theologians who defend the first opinion state that the addition in question was implicitly condemned by Benedict XIV in the Encyclical of November 1, 1745. This is barely discernible, as is evident from a careful reading; explicitly, however, it is found in the work *De Synodo Dioecesana*, Book X, Chapter IV, numbers 2 and 3, with these words: "The Greek, Galvinus, conceded in part, who taught that it is permissible to demand some moderate profit, not from the poor, but precisely from the rich, by way of a loan." "The error 'incidentally suggested by Calvin' was openly defended by Charles Molinaeus in his treatise *De Usuris*, where, in number 10, he boldly asserts that usury is not prohibited unless it is contrary to charity. This same erroneous opinion was embraced, and defended by a different argument, by Claudius Salmasius in his two treatises, one entitled *De Usuris*, the

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other *De Trapezitico Foenore*, in which places he absolves usury from all guilt, unless it harms charity, because it is the price of money lent. Few Catholic doctors dared to subscribe to the impious opinions of Calvin and Molinaeus: namely, those who, when it is a matter of a loan in which money or other goods are given for business, excuse the profit received from the loan, provided it is moderate, and that it remains within the limits defined by the laws of the country. Moreover, although Benedict XIV speaks only as a private doctor in the *Synodo Dioecesana*, he undoubtedly knew best what he intended to condemn in his Encyclical; and therefore, whatever he wrote afterwards about usury in the *Synodo* and in the aforementioned Chapter IV, number 10, where he briefly refers to the doctrine defined in the Encyclical, should be considered as an explanation of that same Encyclical, and to deviate from it would be a sin."

The theologians who defend the second opinion state that the addition in question is not perceived "by reason of the loan, or solely because of the loan, or by force of the loan, or precisely by reason of the loan, that is, of the profit lost, the damage incurred, or any other external title," which was most severely condemned by Benedict XIV as usurious and therefore unlawful, both in the Encyclical, § 3, numbers 1 and 2, and in the aforementioned passage from the *Synodo*, number 11, but "by reason, cause, force, and external title of the civil law," the increase is transferred from the borrower to the lender, in the same way that the ownership of things is transferred from one to another by legitimate prescription: either by reason of the public good, which, under changed circumstances in the present state of affairs, would scarcely or not at all be obtained without that increase; or by reason of an arbitrary, tacit, and mutual consent to the increase, permitted by law on the part of the entire society, which has the right to dispose of its property as it pleases, and especially on the part of...

[*Latin ed. p. 262*]

262 APPENDIX II. of those who, at one time, have abundance of money and at another, are in need, and who, at one time, lend money and at another, receive it: or, by reason of custom, which is almost everywhere received in the Catholic world, even among men of scrupulous conscience, a moderate increase and one defined by the laws of the country is demanded: or for other similar reasons, which Benedict XIV. does not mention anywhere. But to the argument which the proponents of the first opinion draw from the Encyclical and from the work on the Diocesan Synod, they respond in four ways: "1. They respond that Benedict XIV, in the Encyclical, did not establish that it is permissible to receive no increase, even a moderate one, from a loan, except when one is obligated by a simple and naked loan without any increase to help another, which, from the precept of charity, and from that alone, takes place in many cases, and this because at that time no one can have a legitimate title to demand anything above

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the principal when lending on a loan; or when a loan is given in those cases in which no other just contract can be celebrated except a simple loan; which also happens in many circumstances, for example, when one lends wine, oil, etc., to another, as is clear from § 3, no. 5, where, after defining that it is falsely and rashly affirmed that there are always and everywhere present, either together with a loan, other legitimate titles, or, even without a loan, other just contracts, by whose support, whenever money, grain, or something of that kind is lent to another, it is always permissible to receive a moderate increase above the principal, and that he who affirms this not only contradicts the divine documents and the judgment of the Catholic Church on usury, but also, undoubtedly, the common sense and natural reason of men; this definition is justified, and it concludes with these notable words: 'For it cannot escape anyone that in many cases a man is obligated to help another with a simple and naked loan, especially since the Lord Christ Himself teaches: Do not turn away from him who wishes to borrow from you,' and that in many circumstances, besides a simple loan, no other just and legitimate contract can exist; and therefore, according to Benedict XIV, whenever money is lent, and the precept of charity does not obligate one to lend it with a simple and naked loan, it can always be found, indeed, it is everywhere present, some legitimate title, such as civil law, the public good, etc., by whose support it is permissible to receive a moderate increase above the principal, according to that well-known rule: In necessities, the expression of one excludes the other, or at least Benedict XIV does not contradict this opinion."

[*Latin ed. p. 263*]

"APPIEDI v II. 2G3: They respond: 2. To this opinion, furthermore, Benedict XIV did not oppose, as is clear from what he wrote in chapter IV concerning the Synod, numbers 2 and 1: for there he states that, after the schismatics, the perpetual Catholic Church has contradicted both Calvin, who erroneously taught that some moderate profit from a loan could be lawfully demanded by the wealthy, precisely because of the nature of the loan (in which the essence of usury lies); and Charles Molinae, who boldly affirmed that such usury, admitted by Calvin, was not prohibited by its very nature, unless insofar as it is contrary to charity; and also Claudius Salmasius, who absolved the same usury from all blame, except when it harmed charity, falsely alleging that it was the price of money lent; and finally, some Catholic doctors, who, not fearing the impious opinions of Calvin and Molinae, boldly affirmed and erroneously taught, "that usury is not prohibited unless insofar as it is contrary to charity," and that the profit demanded by merchants, and received through a loan precisely because of the nature of the loan, is excused from the stain of usury, provided that it is moderate and within the limits defined by the laws of the country. All of these things, indeed, differ not even by a hair's breadth from the doctrine

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contained in the Encyclical. But one thing is to say that an increase, even a moderate one and defined by the laws of the country, is usurious and illicit when received through a loan precisely because of the nature of the loan; another thing is to say that a moderate increase, defined by the laws of the country, is usurious and illicit when received not precisely because of the nature of the loan, but because of the civil law, or for other external reasons mentioned above: this is what Benedict XIV affirms; concerning the latter, he does not say a word."

"They respond: 3. If, in this hypothesis, Benedict XIV himself were to oppose this opinion in the Synod, there would be no reason to blame those who, based on solid reasons, modestly deviate from his private opinion or explanation, since he himself, at the end of the preface to the diocesan Synod, openly declares that, "in all matters in which no weight has been added by the public authority of the Church," such as, undoubtedly, is the explanation in question, "he intends neither to define anything in the Synod, nor to present decrees," and he cites Melchior Cani to this effect, and the example of Innocent IV, who, although he wrote commentaries on the books of decrees when he held the office of Supreme Pontiff, never arrogated to himself that whatever he wrote in that work should be considered as definitive, but readily allowed his opinions, which he had proposed as a private doctor, to be challenged by other doctors, as is evident, etc."

[*Latin ed. p. 264*]

264 APPENDIX II. "The undersigned writes: In the hypothetical case that Benedict XIV were to hold an opinion contrary to this one in an Encyclical, it could no longer present any further argument for condemning that moderate increase permitted by law, which is observed in the present state of affairs; because a change in circumstances could have introduced, indeed manifestly did introduce, a variation, not concerning the principles upon which the doctrine of the Catholic Church regarding usury and loans is based, which principles are always and entirely unchangeable, but concerning their application. "Having carefully considered, as far as the strength of my limited intellect allows, the doctrine of Benedict, I believe that, as a moderate measure, it is more probable; one can rightly doubt whether that doctrine, by itself, is sufficient to resolve this controversy, or not. However, even with this opinion of mine, to which I must give little credence, if the matter remains uncertain as to whether that increase can be received with a safe conscience; so that I may have the opportunity to provide a suitable response to certain confessors who have recently consulted me regarding this controversy, and to others who, by reason of the duties I perform, whether within or outside the sacred tribunal of Penance, will be seeking my counsel; I humbly beseech and implore Your Eminence to transmit to me a resolution regarding the three questions that I submit here:

"1. Whether the increase, of which we are speaking, is permissible. And

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since this question cannot be directly resolved based on the doctrine of Benedict XIV and other judgments of the Holy See:

"II. Whether a penitent, who has received that increase, whether in goods, or with doubtful or bad faith, can be sacramentally absolved, without any restitution made here and now, provided that he seriously promises to be prepared to carry out whatever the Holy See may determine regarding this matter. And since, as some assert, a provisional response has already been issued in the name of the Holy Office and the Holy See on this and similar questions, of which, however, I am not aware of the content;

"III. Whether it is permissible for those who have neither a title to lost profit, nor to incurred loss, nor to the risk of extraordinary loss, nor are in cases in which the precept of charity towards one's neighbor obliges them to lend simply and without interest, to lend money on loan, with an annual increase of 5% for 100, above the legal rate, as permitted by the royal law, under the same condition of complying with future determinations of the Holy See regarding this matter."

"With the greatest confidence, based on the belief that Your Eminence will graciously accede to my requests, which are so necessary to me, I remain, Your Eminence's most humble and obedient servant. (Pineroli, January 22, 1832)."

[*Latin ed. p. 265*]

APPENDIX II. 265 "The most humble and devoted servant, Joseph Anthony Avvaro, Doctor of Sacred Theology, and Royal Professor of that faculty, Theological Canon, and General Procurator." "From the Sacred Penitentiary – To the esteemed Joseph Anthony Avvaro, in Christ, the following resolutions concerning usury are transmitted, namely: (these are entirely those which we have previously presented, No. V)." "Given in Rome, in the Sacred Penitentiary, on the 11th of February, 1832. E. Cardinal De Gregorio, Major Penitentiary, Secretary." IX. – Sacred Roman and Universal Inquisition, concerning a doubt from the Bishop of Nicaea. "Most Holy Father – In the volumes entitled *Annali delle scienze religiose*, volume 1, number 1, page 128, and in *L'Ami de la Religion*, April 2, 1835, number 2436, the response is read which the Most Eminent Penitentiary Major gave on March 7, 1835, to the most illustrious and Reverend Bishop of Viviers, concerning a question proposed by him regarding usury. The Prelate had stated that some preachers of the Word of God were teaching in public sermons that it is permissible to receive profit from loans under the title of civil law, without mentioning any condition, and that, in light of the resolutions recently issued by the Sacred Penitentiary, which caution that those receiving profit from loans under the title of civil law must be prepared to obey the mandates of the Holy See; and he had asked whether those priests should be condemned. Graciously responding to his request,

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the Most Eminent Penitentiary Major stated that the Sacred Penitentiary had not intended, in those resolutions, to define the question debated by theologians concerning the title derived from the law of princes, but only to propose a rule that confessors should safely follow with regard to penitents who, in good faith, receive a moderate profit established by the law of princes, and who are prepared to obey the mandates of the Holy See, and therefore, it is not possible to condemn the actions of those preachers who absolutely teach in sacred sermons that it is permissible to receive profit from loans under the title of civil law, without mentioning any conditions. "Some, paying attention to those words in the response, contend in good faith that, according to the rule proposed by the Sacred Penitentiary to confessors, only those who have received the aforementioned profit in good faith can be sacramentally absolved, without any obligation to make restitution. Others, on the contrary, assert that even those who have received the said profit with doubt or bad faith can be absolved, without any obligation to make restitution, provided that they are prepared to obey the mandates of the Holy See; and they say that this clause does not refer to the obligation of restitution, but rather to the honesty of the person acting, and to the absolution, which confessors cannot grant to penitents who are in bad faith, unless they first repent of their bad faith."

[*Latin ed. p. 266*]

266 APPENDIX II. This is deduced from the very petition of the Bishop of Viviers. They say that the Bishop did not ask whether penitents, established with doubt or bad faith, were obligated to restitution, but only whether those preachers should be condemned who, without stating any condition, proclaimed the lawful use of the aforementioned loan; and since the Holy See has not yet defined the question, and a contract made in bad faith, although it does not of itself impose the burden of restitution, always nevertheless incurs the guilt of sin; hence, they say that the Most Eminent [Cardinal] condemned the conduct of those who, disregarding the conditions of good faith and the mandates of the Holy See, absolutely proclaimed the lawful use of said loan, although the Most Eminent did not speak of the obligation of restitution, which was not requested by the Prelate. They also deduce this from the condition required by the Holy Penitentiary for penitents, in accordance with the mandates of the Holy See, which arrangement necessarily either presupposes or provokes consideration of the honesty of the aforementioned loan. And since there are men of the highest piety and of authority not to be scorned; hence, for the sake of the tranquility of souls in this matter, which is so frequent and serious, it is humbly requested: "Can penitents, who have received a moderate profit solely by the title of the law from a loan with doubt or bad faith, be sacramentally absolved, without any burden of restitution being imposed, provided that they sincerely repent of the sin for the contract made with

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doubt or bad faith, and are prepared to obey the mandates of the Holy See with filial obedience?" Nicaea, 9 September 1837. — Subscribed — jfc Dominic, Bishop of Nicaea. "Vol. IV, January 17, 1838. In the General Congregation of the Holy Roman and Universal Inquisition, held in the Convent of Santa Maria sopra Minerva, before the Most Eminent and Reverend Lords, Cardinals of the Holy Roman Church, General Inquisitors, regarding the aforementioned question, these same Most Eminent and Reverend Lords said: "Affirmatively, provided they are prepared to obey the mandates of the Holy See." Place for the seal. — Angelus Argenti, Notary of the Holy Roman and Universal Inquisition. X. — S. Congregation of S. O., dated March 26, 1840. "Regarding the question of whether N. N. is obligated to return anything, to whom his father had given a large sum of money as a loan with an interest of ten percent, corresponding to the legal rate of that time; and whether he would be subject to restitution, "whether he can lawfully retain at least five percent," it was decreed: "Regarding usury in general, consult the decrees already issued. Regarding the excessiveness of the profits, consult the Reverend Father Bishop, who should examine the circumstances of the case, and the practice of that time, which prevailed among men of scrupulous conscience, and provide accordingly."

[*Latin ed. p. 267*]

APPENDIX II. 267 XL - After the year 1871 had passed, a question was posed from a certain place in Italy: "1. Is it permissible, even for ecclesiastics, today, to invest money with a moderate return, as was permitted by the law under the legitimate government, at a rate of five percent? - 2. Should those pious institutions, monasteries, and convents, which receive a return of six percent on their capital, be concerned, given that this is the common practice today?" The Sacred Congregation of Holy Orders, on the date of February 28, 1872, responded to both questions: "Provided that they are prepared to adhere to the mandates of the Holy See, there is no reason for them to be concerned." Conclusion: - The following statements, presented in chronological order, are the principal responses among many others that pertain to this matter. From these, it can be gathered: 1. In general, speaking of profit derived from a loan, nothing whatsoever can be received from it by virtue of the loan itself, or immediately and precisely by reason of its nature. 2. It is permissible to receive something beyond the principal, if, perhaps, some external title, not universally connected with and inherent in the nature of the loan, is added to the loan. 3. If other titles are lacking, such as 'lost profit, emerging damage, and the risk of losing the principal, or undertaking unusual labors for the recovery of the principal,' even a single title of civil law can be considered sufficient in practice, both by the faithful and by their confessors, and therefore, it is not permissible to disturb their penitents on this matter, until this question remains under consideration, nor until the Holy See has explicitly defined

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it. 4. The tolerance of this practice cannot in any way be extended to usury, whether it be a small usury against the poor, or a usurious rate that exceeds the limits of natural equity. 5. Finally, the quantity of usury that is to be considered excessive and immoderate, and that which is just and moderate, cannot be universally determined, since this must be determined in each individual case, taking into account all and each of the circumstances of the place, the persons, and the times.

[*Latin ed. p. 268*]

268 Letters from His Holiness, Pope Leo XIII, addressed to the Emperor of Ethiopia, in which he implores him to release the Italian prisoners. Most Powerful Negus Negusti, greetings and prosperity. It pleased you formerly to salute, with a spontaneous and auspicious omen, the beginning of Our Pontificate; and, ten years later, when the fiftieth year from the beginning of Our priesthood was solemnly celebrated, you offered a new testimony of your regard for Us. Such proofs of your benevolence towards Us have rejoiced Our heart, and have greatly honored you. Therefore, for this reason, now Our words are addressed to you, Emperor and Christian, that we may, as far as possible, urge you to an act of supreme generosity, worthy of a most noble King. The victory recently achieved has delivered many prisoners into your hands. These are young men, vigorous and worthy of respect, who, at the prime of their youth and at the very dawn of the most beautiful hopes, have been torn away from their families and their homeland. Indeed, their captivity does not increase the power of your might, nor the extent of your dominion; but the longer it is prolonged, the more acutely the pain pierces the hearts of thousands of innocent mothers and wives. For Us, imbued with the holy mission that Our Lord Jesus Christ has entrusted to Us, and which extends to all...

[*Latin ed. p. 269*]

To the Christian Lions, We love them as sons. – Therefore, accept this request, which a common Father makes to you, in the name of the Divine Trinity, in the name of the blessed Virgin, and in the name of all that is most dear to you in this world: please, without delay, restore their freedom. Most Powerful Negus Negesti, do not refuse to show yourself magnanimous in the eyes of the nations. Record this truly glorious deed in the annals of your reign! What, after all, are the merciless rights of war compared to the rights and duties of human fraternity? God will surely render to you a most ample reward for this, for He is a merciful Father. A thousand voices from all sides will strive to bless you, and our own will be the first to be heard. While awaiting the signification of your will, we implore from Heaven all good things for you, and for the royal family. Given at Rome, near Saint Peter, on the 11th of May, in the year 1896, in the nineteenth year of Our

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Pontificate. LEO PP. XIII.

[*Latin ed. p. 270*]

270 LETTERS. Leo Victor, of the tribe of Judah, Menelik, chosen by the Lord, King of Kings of Ethiopia, to the Most Holy Pope Leo XIII, greetings.

LEO XIII, POPE. Greetings! I have received through Monsignor Macaire the paternal letter, in which Your Holiness, after graciously recalling our previous relations, appealed to my sentiments of clemency in favor of the Italian prisoners, whom the will of God has placed in my hands. I add that Your Holiness could not have chosen a more eloquent and sympathetic envoy to interpret Your sentiments than His Excellency, Monsignor Cyril Macaire. I was deeply moved upon reading the admirable letter of the Father of all Christians, and upon hearing the words of his illustrious envoy, and the first impulse of my heart was to grant Your Holiness the satisfaction that You so nobly requested, for I too lament the many and innocent victims of this cruel war, of which I am aware that I have not provoked. But alas, my ardent desire...

LEO XIII, POPE. Greetings. I received through the Bishop Macarius truly paternal letters, in which Your Holiness, having most graciously recalled those which I have previously presented to You, urges me, in the service of piety, to exercise my sentiments of clemency for the Italian captives, whom God has entrusted to my hands. To this I add that Your Holiness could not have chosen anyone more eloquent or more acceptable to interpret Your sentiments than the Most Reverend Monsignor Cyril Macaire. Indeed, having read the letter of the common Father of the Christians, and having heard the words of the illustrious legate sent by him, I was deeply moved, and the first impulse of my heart was a sincere desire to grant Your Holiness that which You so nobly requested and so urbanely expressed, for I myself lament so many and innocent victims of this destructive war; and yet, I am intimately aware that I have not provoked this war. But alas, misfortune!

[*Latin ed. p. 271*]

Letters. Your Holiness has been displeased by the unexpected conduct of the Italian Government, which, after having seen me express my desire to make peace and to re-establish good relations between us, continues to act towards me as if we were still at war. My duty as King and as Father of my people forbids me, in these circumstances, to sacrifice the only guarantee of peace that is within my power, for the sake of pleasing Your Holiness and myself. It is with the deepest sorrow that, after having carefully considered all things in my conscience as Monarch and as Christian, I am compelled to postpone to a more opportune time the expression of affection and high esteem that I would have wished to offer to Your Holiness. I hope that the great voice of Your Holiness, which all Christians hear with respect, will rise in favor of the justice of my cause, which is the cause of the indepen-

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dence of the people, whose government God has entrusted to me, and that She will thus bring about very soon the fulfillment of our common desire to return to their families those who are separated from them.

271. The reason for not fulfilling your wishes was that the unexpected course of action by the Italian government in this matter was to be avoided; for after having declared its intention to make peace with me and to re-establish good relations between us, it proceeded to act towards us as if war still existed between us. Both my duty as King and as Father of this people, in the role that I fulfill, forbids me, in these circumstances, to sacrifice the only guarantee of peace that is within my hands, for the sake of pleasing Your Holiness and myself. With the greatest sorrow of my heart, after having seriously considered the matter with myself as King and as Christian, I am compelled to postpone to a more opportune time the testimony of my affection and esteem, which I had desired to offer to Your Holiness. Indeed, I hope that the illustrious voice of Your Holiness, which all Christians hear with reverence, will strongly proclaim in asserting the justice of my cause; which is also the cause of this people (whose government God has given to me); for it concerns the civil liberty of the same. And thus, the same Holiness will bring about the fulfillment of our common desire, namely,

[*Latin ed. p. 272*]

272 LETTER. I can, in the meantime, reassure Your Holiness concerning the fate of the Italian prisoners, whom I have never ceased to protect and to treat according to the duties of Christian charity, and to whom, for Your Holiness' consideration, I shall grant further alleviations, if it is possible, for the restoration of families and relatives whom the calamity of war has removed from them. I can, meanwhile, assure Your Holiness concerning the condition of the Italian captives; whom I have never neglected to protect, and to receive according to the precepts of Christian charity, and afterwards, for the same reason, I shall also take care to grant them indulgences, if it can be done. Given in our city of Addis Ababa, on the 22nd of the month of Mascaram, in the year 1889. In the year of the restored salvation 1896, on the first day of the month of October. FROM THE CONSISTORY ACTS Concerning the Consistory held on November 30, 1896. The Most Holy Father, after the preceding address, proposed the following churches: The Cathedral Churches of Ostia and Vaux, perpetually and canonically united, vacant, through the death of the Most Reverend Monsignor Raphael, formerly Cardinal of Monaco, the last Bishop outside the Roman Curia, by the favor of the Most Eminent and Reverend Lord Aloysius, of the same, Cardinal of Oreggia, to Saint Stephen, Dean of the Sacred College. The Cathedral Churches of Portua and Saint Rufina, perpetually and canonically united, vacant, through translation, by the power of option, of the Most Eminent and Reverend Lord Aloysius, of the same, Cardinal of Oreggia, from Saint Stephen, by the favor of the Most Eminent Cardinal Parocchi. The Cathe-

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dral Church of Alban, vacant, through translation, by the power of option, of the Most Eminent and Reverend Lord Lucidi Mary, of the same, Cardinal of Parocchi, to the seats of Portua and Saint Rufina, perpetually and canonically united, by the favor of the Most Eminent and Reverend Lord Isidore, of the same, holding the title of Cardinal of Saint Callixtus, having relinquished the aforementioned priestly title.

[*Latin ed. p. 273*]

273 FROM THE CONSISTORY ACTS: The titular Archiepiscopal Church of Stauropolis is vacant, due to the death of the Most Reverend Francis Dominic Reynaud, the last Archbishop, who died outside the Roman Curia, with the favor of the Most Reverend Alexander de Risio, Archbishop of St. Severina. The titular Archiepiscopal Church of Ancyra is vacant, due to the death of the Most Reverend John Cirino, the last Bishop, who died outside the Roman Curia, with the favor of the Most Reverend Julius Vaccaro, Bishop of Trivento. He was also appointed as a coadjutor with future succession to the Most Reverend Dominic Marinangeli, Archbishop of Trani, Nazareth, and Barola, and perpetual administrator of the Church of Vigiliensis. The titular Archiepiscopal Church of Ferrara is vacant, due to the death of the esteemed memory of Giles, while he lived, holding the title of Cardinal Priest of St. Mary above Minerva, the last Archbishop having died outside the Roman Curia, with the favor of the Most Reverend Peter Respighi, Bishop of Guastalla. The Metropolitan Church of St. Severina is vacant, due to the transfer of the Most Reverend Alexander de Risio to the titular Archiepiscopal Church of Stauropolis, with the favor of the Reverend Nicholas Piccirilli, priest of the archdiocese of Theatine. He, born in the city of Theatine, having reached the forty-first year of his age, having resigned as Synodal Examiner, archdiocesan visitor, and Master of Ceremonies in the Metropolitan Church of Theatine, as well as having previously resigned from the positions of Mansionary and Parish Priest. The titular Archiepiscopal Church of Sardinia is vacant, due to the death of the Most Reverend John Ponzi, the last Bishop, who died within the Roman Curia, with the favor of the Most Reverend Benedict Lorenzelli, priest of the archdiocese of Bologna. He undertook the office of Apostolic Missionary in Holland, and most recently resigned as Apostolic Legate to the Kingdom of Bavaria. The Cathedral Church of Abellino is vacant, due to the death of the Most Reverend Francis Gallo, the last Bishop, who died outside the Roman Curia, with the favor of the Most Reverend Seraphin Angelini, Bishop of Anglonen-Tursien. The Cathedral Church of Guastalla is vacant, due to the promotion of the Most Reverend Peter Respighi to the Archiepiscopal See of Ferrara, with the favor of the Most Reverend Henry Grazioli, titular Bishop of Samosata. The Cathedral Church of Feretrano is vacant, due to the transfer of the Most Reverend Charles Bonaiuli to the See of Pesaro, with the favor of the Reverend Alphonsus Andreoli, priest of

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IPergulana. He, born in Pergola, having reached the forty-seventh year of his age, having performed the duties of diocesan visitor and pro-Synodal examiner, having also resigned from the positions of general vicarius spiritualis of the diocese of Pergola, and Primicerius Canon. The Cathedral Church of Nusco is vacant, due to the death of the Most Reverend Aemilius TodiscoGrande, the last Bishop, who died outside the Roman Curia, with the favor of the Most Reverend Michael Archangel Pirone, priest of the archdiocese of Abellino. He, born in Abellino, having surpassed the fifty-sixth year of his age, having resigned from the positions of pro-Synodal examiner and Cathedral Canon. The Cathedral Churches of Soana and Pitilian are perpetually and canonically united, and are vacant, due to the transfer of the Most Reverend Julius Malteoli to the Cathedral Church of Pescia, with the favor of the Most Reverend Michael, in the world John Francis Cardella, of the Congregation of the Most Holy Cross and Passion of Our Lord Jesus Christ, priest of the archdiocese of Lucania. He, born in the place commonly called Marlia of the archdiocese of Lucania, having reached the fifty-first year of his age, and having resigned.

[*Latin ed. p. 274*]

274 FROM THE CONSISTORY ACTS: Having entered the service of Our Lord Jesus Christ, having been ordained a priest and granted the degree of Lecturer in sacred theology, he held the offices of Rector and Provincial Superior in the same Congregation on several occasions. The Cathedral Church of Bisarcio was vacant due to the death of the Most Reverend Seraphin Corrías, the last Bishop of that diocese, outside the Roman Curia, by the favor of the Reverend Father Philip Bacciu, a priest of the same diocese. He, born in the place commonly called Budduso, in the diocese of Bisarcio, and having reached the age of fifty-nine, having previously been granted the doctoral degree in sacred theology, resigned from the positions of Canon and Parish Priest of the Cathedral Church of Bisarcio, and also from the office of Pro-Synodal Examiner. The titular Archiepiscopal Church of Pelusia was vacant due to the translation of the Reverend Father Guy Corbelli to the Cathedral See of Cortona, by the favor of the Most Reverend John Glavin, Bishop of Theodosiopolis. The Cathedral Church of Tlascala, or Angelopolis, in the territory of Mexico in North America, was vacant due to the death of the Most Reverend Francis Melithonis Vargas, the last Bishop of that diocese, outside the Roman Curia, by the favor of the Reverend Father Joseph Perfect Amezquita, Bishop of Tabasco. The Cathedral Church of Mañan, in Brazil, was vacant due to the death of the Most Reverend Anthony Mary Correa de Sá and Benavides, the last Bishop of that diocese, outside the Roman Curia, by the favor of the Reverend Father Silvera Gomes Pimenta, titular Bishop of Camachensis. The Cathedral Church of Constantia was vacant due to the death of the Most Reverend Louis Henry Julien Lafferrière, the last Bishop of that diocese, outside the

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Roman Curia, by the favor of the Reverend Father Julius Stephen Gazaniol, titular Bishop of Thururbita. The Cathedral Church of Veglen was vacant due to the translation of the Reverend Father Andrea Sterk to the Sees of Tergeste and Justinopolitan, which are perpetually and canonically united, by the favor of the Reverend Father Anthony Mahnic, a priest of the archdiocese of Gorizia. He, born in the place commonly called Hobdilj, in the archdiocese of Gorizia, and having reached the age of forty-seven, having been granted the doctoral degree in sacred theology, resigned from the offices of Consistorial Advisor and Assessor of the matrimonial tribunal. The Cathedral Church of Rosnav was vacant due to the death of the Most Reverend George Schopper, the last Bishop of that diocese, outside the Roman Curia, by the favor of the Reverend Father John Ivankovits, a priest of the diocese of Csanad. He, born in Szeged, in the diocese of Csanad, and having surpassed the age of forty-nine, held the offices of Chaplain, Parish Priest, and Professor of religious doctrine in the Royal School of Szeged, and subsequently resigned from the office of ecclesiastical advisor in the Royal Ministry of Worship of Hungary. The Cathedral Church of Lugos, of the Greek-Ruthenian-Catholic rite, was vacant due to the promotion of the Reverend Father Victor Mihalyi de Apsia to the Metropolitan See of Fogaras and Alba-Iulia, by the favor of the Reverend Father Demetrius Radu, a priest of the archdiocese of Fogaras. He, born in the village commonly called Tompahaza, in the archdiocese of Fogaras, and having reached the age of thirty-five, was co-opted among the students of the College of Greeks in Rome, having previously been granted the doctoral degrees in philosophy and sacred theology, he went to the archdiocese of Bucharest, where he held the offices of Consistorial Assessor, Rector, and Professor of sacred theology. The titular Episcopal Church of Germanician was vacant due to the death of the Most Reverend Gustav de Belrupt-Tyssac, the last Bishop of that diocese, outside the Roman Curia, by the favor of the Reverend Father Emmanuel Second Ballon, a priest of the diocese of Arequipa. He, born in the place commonly called Tiabaya, in the diocese of Arequipa, and having reached the age of...

[*Latin ed. p. 275*]

FROM THE ACTS, 275. Having surpassed the thirtieth year of his age, having received the doctorate in both laws, having been appointed Professor of Moral Theology and Church History in Arequipa, and now having relinquished his position as Director of the pious Society of Saint Monica and as Canon of the Cathedral Chapter, he was appointed to the titular Episcopal See of Samaritan, under the Archbishop. This appointment followed the death of Basil Leto, the last Bishop, who died outside of Rome. This was done with the favor of the Reverend Gaspar Bova, a priest from Palermo. He, born in Palermo, having surpassed his fiftieth year, having first served as a secret advisor to the Archbishop of Agrigento, and then,

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having returned to his homeland, diligently undertook the spiritual care of many monasteries, colleges, and Piarist congregations. The titular Episcopal See in Bithynia, vacant due to the death of Helenopolitan, was also filled. The last Bishop of that See, having died near the Roman Curia, this was done with the favor of the Reverend Anthony Mary Cesareo, a priest from Catania. He, born in Catania, having reached his seventieth year, having previously received the doctorate in sacred theology and canon law, was first elected as a Pro-Synodal Examiner and then as a Canon in the Collegiate Church of Saint Mary, commonly known as "dell'Elemosina," and subsequently in the Cathedral. Most recently, he relinquished his position as Prior Canon of the same Cathedral. FROM THE SACRED CONGREGATION FOR THE COUNCIL OF PARIS, ON MARRIAGES. On March 28, 1896, Session 24, Chapter 5, concerning the reform of marriages. In the Church of Saint John the Baptist in Grenelles, in Paris, Joanna, who had reached the age of twenty-nine, and Francis, having completed his twentieth year, were lawfully married on September 26, 1882. However, the marriage had an unhappy outcome; for the husband, addicted to drunkenness, was of a violent nature, and, it seems, harbored a particular aversion towards women. Therefore, as the wife reports, Francis never wished to fulfill his conjugal duties, and in response to her repeated requests, which were made in earnest, he offered the following:

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 276*]

276. PARISIEN. When her mother reproached him for his contemptuous behavior, he replied that he did not love women, and that he preferred a tavern wench to a wife. In this most miserable state, Joan endured for nearly ten years, but when her husband's violent and irredeemable behavior continued to worsen, she sought recourse in the civil court to obtain a divorce, which was formally declared on January 11, 1892, due to the incompatibility of the two spouses' characters, and especially because the husband never fulfilled his conjugal duties, as was confirmed by a medical examination. Then, wishing to consult her conscience, Joan, through suppliant letters, appealed to the Supreme Pontiff, requesting only a dispensation from her marriage. The Sacred Congregation of the Council, to which her petitions were sent, immediately entrusted the matter to the Most Reverend Archbishop of Paris, who, with great diligence, initiated the proceedings through a delegated judge, carefully examining the plaintiff and her witnesses. The defendant was also duly summoned to appear in court and submitted to the judge's questioning, but he refused to present any witnesses. After the judicial investigation was completed with due diligence, the Archbishop sent the proceedings to the Most Reverend Prefect of the Sacred Congregation in May 1893, at the same time commending Joan

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with these words: "Nothing of any importance concerning this type of case has come to light, except that she is a most honest and devout woman, who also presented entirely commendable witnesses. Furthermore, the expert examination appeared to be most favorable to her."

A SYNOPTIC DISCUSSION. The Consultor distinguished two questions: 1. Whether it can be established that the said marriage was not consummated; 2. Whether there are just causes for a dispensation; and he answered affirmatively to both. First, he noted two things regarding the form of the proceedings concerning the lack of consummation: one is that it was properly completed if...

[*Latin ed. p. 277*]

PARIS. It is to be understood that two experts, without the presence of midwives, proceeded immediately to examine the woman, which is the custom in Paris, and this custom is valid, according to Pope Benedict XIV in his Constitution *Dei Miseratione* III, on the nones of November, 1741, and the Sacred Congregation of the Council, on August 22, 1840. Another point is that, when it is a question of whether consummation has taken place, physical certainty is not required, but moral certainty suffices: as the *Conscientia De Separatoribus et Coniugis* states in Book I, chapter 3, number 146, "when a hidden fact is involved, of which there are no witnesses, the proofs cannot be certain with physical certainty, but they are sufficient with moral certainty, which is capable of establishing the mind of the judge, just as conjectures, indications, presumptions, and other arguments, when considered together, teach." Having stated these things, he says: "It is most certain that there was no consummation; for, first, the spouses, affected by antipathy towards each other, never attempted consummation, and they constantly affirm, by oath, that they have never consummated their marriage. It is true that they disagree in the court regarding the cause of the lack of consummation, but they are entirely in agreement regarding the lack of consummation itself, as is evident from the records, and as the Archdiocesan Court noted in the documents sent to the Sacred Congregation of the Council on October 29, 1892: 'The spouses agree in the assertion of the lack of consummation of the marriage; they disagree, however, in assigning the causes of this fact. We have seen the plaintiff and the defendant; the woman was deemed worthy of pity, and we believe her to be endowed with virtues. The man, however, appeared before the Official Court in squalid clothing, and he bore the appearance of a wine drinker.' The woman, under oath, confessed before the judge as follows: 'My father strongly encouraged me to marry. Before the marriage, a month or two earlier, I had some concerns about my future; I believed I had heard that this young man drank. Mr. Francois sometimes said that he had worked and that he had been prevented by his occupations, and he amused himself, as we later learned. On the first day, he excused himself with fatigue in

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order not to ask for the fulfillment of the conjugal duty. He never asked me to fulfill the duties of marriage.'"

[*Latin ed. p. 278*]

278. PARISIEN. Concerning conjugal relations: We always shared the same room and the same bed, except for the last five or six months of our life together. I often made indirect requests to him, out of discretion, not daring to be more explicit. I often repeated to him that we had not married to remain in this state, that I desired children, and other requests of the same kind. "To my various requests, he responded with disdain and contempt, often repeating that he did not love women, that he preferred a tavern to a woman. I affirm with the utmost certainty that my marriage with Francis was never consummated, and this was due to my husband, who, I affirm once again, asked me for nothing, and never attempted anything." Regarding the words of the man Francis, I confess that they are clear: "I swear that the conjugal act was not consummated, nor even begun; I swear it before God, and upon the head of my father who is dead. The responsibility for this belongs entirely to my wife." Furthermore, in order to give an account regarding the lack of consummation, he repeats the following, citing the repugnance of his wife: "I immediately asked my wife to fulfill the conjugal duty, but she refused me, as she has always refused me afterwards, despite all my attempts. Not wanting to use violence, not wanting to force her, I did not go any further." And to the question posed by the defender, he responds: "Yes, she initially took the natural position, but immediately she pushed me away, and began to cry and to weep." To whom should credence be given? Credence must be given entirely to Joanna, because this most honest woman and utterly truthful person is presented by both the archiepiscopal court and all the witnesses. Perhaps, while he was intoxicated, he embraced her in a brutal manner, or asked something of her like a brute: this is what the witness, Madame Barrat, states in the case.

[*Latin ed. p. 279*]

PARISIAN. 279 The man lies. a) Since he is called a defendant and, having already been condemned by the civil court for injury to his wife due to the non-consummation of the marriage, it is not surprising that he attributes the entire cause of the unconsummated marriage to the woman through deceit. However, he could not deny the very fact of the non-consummation, since he himself knew that his wife was found to be a virgin after a thorough examination by the civil court. — b) Furthermore, he was caught in a lie: Mons. Villard, a witness in the case, stated: "Mons. Francis came one day to complain that his wife had not prepared lunch for him. The next day, his wife showed us the lunch that had been prepared the day before. Mr. Francis claimed not to have seen it, but he had

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certainly seen the bottle of wine. I have heard Mr. Francis address insults to his wife on several occasions, some of the most vulgar that I request permission not to repeat." c) Indeed, even when giving his account of the non-consummation with the woman, he was found to contradict the testimonies of several sworn witnesses. Let the testimonies of two suffice: one from Mr. Peter Villard, the other from Mr. Verschère. Furthermore, Villard states: "He said quite clearly: 'I have never had relations with my wife; I prefer a bottle of wine.'" Similarly, Mr. Verschère states: "Mr. Francis himself told me that he did not love his wife and that he preferred a bottle of wine." — d) What is surprising about the lies of this man, if he is found to be habitually drunk? Indeed, from such egoists, whom they call men, one should not expect the truthfulness of rational souls, since telling the truth would harm them. For, as Chrysostom says, "Drunkenness makes men worse than irrational beasts." And St. Augustine says, "Drunkenness is a flattering demon, a sweet poison, a grave sin; he who has it does not have himself; and he who does it does not commit a sin, but is entirely sin." Furthermore, in the testimonies given by all the witnesses in the case, Francis was found to be habitually drunk and often completely intoxicated; let one testimony suffice.

[*Latin ed. p. 280*]

280. The housekeeper of the house in which D. Francis resided frequently returned home, having been with him, often in a state of drunkenness. The woman suspected some degree of the man's impotence. For she said, "Everything leads me to believe that my husband is impotent; his reserve towards women, and towards me, his wife, his passion for drinking. But I have not personally observed that he is impotent. Moreover, it would be difficult for me to ascertain his impotence, since he has never requested the fulfillment of the conjugal duty, and I myself do not know." Furthermore, there was already an antipathy from the very first days of the marriage. On the day of the wedding, the coldness of their feelings was evident. The woman, Joanna, said, "He did not please me much," and as the sworn witness Fayein recounts, "She, Joanna, told me that this marriage was far from pleasing him, but that it pleased her father, and that therefore she would accept it. Her father, whom she loved without reserve, had made many promises to her to persuade her to accept him; and as she was very young, she allowed herself to be persuaded." Furthermore, Francis's constant drunkenness and his extremely harsh behavior could not fail to alienate and deeply separate the hearts of the couple. Almost all the witnesses testified, "He was always very brutal and violent with his wife." Therefore, besides the sworn confession of both spouses regarding the lack of consummation, there is reason to believe that this stemmed from the man's aversion to all women, and perhaps his impotence, and in the woman, from her constant antipathy towards this man, always intoxicated with wine.

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However, let me use these words carefully, and cite: "When spouses, due to mutual aversion and antipathy and hatred, have never been together in that state which consummation necessarily requires, all pretexts are completely removed, because in this case, one cannot be deceived or deluded, since consummation is impossible without suitable and proportionate means." Furthermore, let us also cite Em. Card. De Luca, *De Matrimonio*, discourse 9, n. 15: "In another case, in which, due to enmities and antipathy, the same practice was followed, with the presupposition that it was a valid marriage, the difference is..."

[*Latin ed. p. 281*]

PARISIAN. 281: "It greatly concerned me that the matter concerned a widow, who had already been with a man, and therefore I did not know how she could be convinced of the negative consummation of the marriage, for although it is not entirely impossible to justify, it seems too difficult, so much so that it is a difficulty that is somewhat akin to impossibility." Therefore, any presumption of consummation vanishes, because they have lived together and slept together, as rightly noted by Ursaya, Disputations, vol. 2, p. 1, disputation III, no. 45: "The cohabitation of spouses does not cause the marriage to lose its quantity and denomination when it has not been consummated with effect." Corrad., in Prax. Disp. I. VIII, c. 7, no. 32. Furthermore, there is the testimony of seven witnesses: for they all testify with one voice regarding the honesty and veracity, especially of the petitioner; and the archiepiscopal court also gives testimony in this regard, stating in the records of the month of May, in the year 1893: "Nothing of any importance has come to light concerning this matter that should be noted, except that the petitioner is a most honest and devout woman, who has also produced witnesses who are entirely commendable." Indeed, the confession of the spouses, supported by the testimony of seven witnesses, provides certainty in such controversies; Sánchez, De matr., book 8, disputation 9. Caelest. V., De Frigidis et Male fic. The same is repeated by the Doctors, e.g., Conc. De separatori coniug., I. 3, c. 2, no. 134: "Sometimes, if the spouses have lived together without consummation, and a separation is sought through legal means, the oath of the spouses themselves, together with the oath of seven relatives, is proven, according to the text in canon 2, chapter 33, question 1." And no. 136 adds: "Furthermore, in this matter, the oath of seven blood relatives or close relatives from both sides of the spouses; if they firmly affirm that they believe the confession of the spouses to be true, and that they have such a clear conscience that they are incapable of uttering a lie or perjury, they dispel any suspicion of collusion and falsehood."

[*Latin ed. p. 282*]

282. PARISIAN. This certainty concerning the lack of consummation will

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be strengthened if proof is added from the perspective of the female body. Indeed, the female genitalia, properly examined by highly skilled experts, present an undeniable sign of the woman's virginity. To these medical testimonies, which are highly expert, I will add the testimony of the most learned Mr. Socquet, although he was not sworn before an ecclesiastical tribunal, but before a civil tribunal, where, after describing the condition of the virginal hymen of Joan, he concludes: "1. Madame Jeanne is not defiled; therefore, she is a virgin. 2. The conformation of the external genital organs of this lady is normal; therefore, nothing prevents her from complete sexual relations." However, there are very serious reasons for granting a dispensation. Indeed, a very serious reason is the incompatibility of souls, in which the hope of future reconciliation does not shine. Cf. *De Iustis De dispens. matr.*, Book II, nos. 21-34, and other Doctors who commonly consider this reason to be most just. But such a incompatibility exists between Francis and Joan. For from the records it is evident that there is a disparity of character, so that a happy outcome of the marriage cannot be hoped for: the husband is violent and very harsh towards his wife, while she is rather timid and gentle. And almost all the witnesses in the case speak in this way, and the conclusion of all of them, with no exception, in their testimonies is that reconciliation is impossible; and that they can only be separated, not only because of this incompatibility of character, but also because Francis did not provide for his wife, and indeed, he demanded that she provide for the necessities of life, and he was repeatedly sworn to indulge in his own vices, namely drunkenness, with the property of his wife. The very fact of habitual drunkenness, without hope of amendment, would be a just cause for the desired separation. Furthermore, from this vice of drunkenness, another just cause follows, namely, if they were forced to live together, there is a very probable fear of future scandal, discord, and quarrels between them and their relatives. Moreover, when dealing with a drunkard, the woman would be exposed to frequent insults and dangers in life.

[*Latin ed. p. 283*]

PARISIAN. 283 It would be a great danger, not only to her life, but also to her soul, for a woman to be obliged to live with such a man, to foster the marital relationship with one who, because of his drunkenness, could never properly satisfy his wife in the marital act, a wife who is strongly affected by the desire to have children. He could not fulfill his marital duty even if he wished. Indeed, there is doubt about the man's ability to procreate. For many witnesses testify that he is of very delicate constitution. Moreover, besides the aforementioned woman, there are witnesses who recount with the utmost certainty the lack of consummation due to impotence. Furthermore, the signs of this drunkenness were also present before the marriage; hence, some doubt would seem to be cast upon the very validity of the marriage; but, indeed, it would be easier to obtain a dispensation

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than the woman requests. Moreover, the subsequent impotence would be a just cause; but another cause is stronger, namely, the sentence of divorce pronounced by the civil tribunal. Given these circumstances, since moral reconciliation and the union of bodies, as nature requires, are impossible, the woman would be obliged to perpetual widowhood. But this woman is very young, and she cannot be subjected to such a great evil. For to endure this would not only exceed the ordinary strength of a woman, but would also inflict a very serious injury upon her. Furthermore, the Sacred Congregation of the Council has, for one or both of these reasons, granted a dispensation from a valid but unconsummated marriage to the Roman Pontiff, and he has obtained it. Moreover, a) if the lack of consummation of the marriage is proven by the sworn testimony of the spouse and by the testimony of seven witnesses, which, if supported by an oath, provides moral certainty - or b) if a dispensation has been obtained from the Sacred Office, even if the hymen has been found torn in some part (cf. Acta S. Sedis v. XII. p. 629; XIV. p. 361; XVII. p. 367; XVIII. p. 523; XIX. p. 239): then it must be said that the marriage between Francis and Joanna is undoubtedly unconsummated; and this is all the more worthy to be dispensed from the bond of marriage, since all the circumstances are present.

[*Latin ed. p. 284*]

284. The most just causes for a dispensation of this kind, and at the same time, all the proofs of consummation are lacking.

THEOLOGIAN'S OPINION. Concerning the validity of marriages, it is necessary to know that the power of consummation is required; however, daily experience demonstrates that this power is often lacking due to frigidity. Those are to be considered frigid who, when marital relations are due, do not erect themselves, or who suffer an insurmountable aversion to the legitimate union. The cause of this may be either a natural or innate weakness of the organs, or a weakness acquired through repeated acts of intemperance. From this category of the impotent are found not only those who have been guilty of venereal abuse, but also those who are accustomed to drowning themselves in wine or any other intoxicant. "Whatever fermented beverage it may be," writes Dr. Roubaud in his *Treatise on Impotence*, page 196, "whose abuse... the consequences, with regard to the matter that concerns us, are perfectly identical; all lose, along with the feeling of their dignity, the moral stimulant that drives one sex towards the other, and, at the same time, the physical sensitivity without which the organs remain deaf to external impressions."

Such frigidity was the cause in the case of the man named Francis, who, on September 27, 1882, being then twenty years old, was being received into a legitimate marriage with Joanna, of nearly the same age, before the parish priest of the church of St. John the Baptist in Paris. For about eight years, the spouses lived under the same roof, using the same bed, but they did

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not consummate their marriage. The woman, who desired to be a mother and to bear children, frequently begged her husband, through prayers and tears, to fulfill his marital duty. However, the husband rejected this proposal, saying that he preferred to drink wine than to approach women. Meanwhile, he demonstrated that he felt no love for his wife through his actions. Nevertheless, the unfortunate wife endured everything in silence and patience, not thinking of changing her fate, until, by chance, she was informed by a friend that the cause of the lack of consummation in her marriage lay in the possibility of divorce. This news, as it opened the way to unexpected happiness, was received with joy.

[*Latin ed. p. 285*]

PARISIAN. 285 It appears, indeed, that a certain woman joined a secular judge, and soon, having demonstrated her integrity through a medical examination, she obtained the desired judgment. Knowing that this holds no value before God, she, through supplicatory letters addressed to His Holiness, implores that, by apostolic authority, a dispensation be granted concerning her marriage, as if it were valid but not consummated. The man, who is the defendant in the woman's case, does not contradict her prayers, but rather, although it happened not through his own impotence, but because of adverse circumstances hindering his efforts, he confesses that he never consummated the marriage. Given these circumstances, concerning two points, I, as a theologian, will offer my opinion: 1. Whether it can be established that the marriage in question was not consummated through conjugal intercourse. 2. Whether there are sufficient and suitable reasons to advise the Holy See to deign to grant the requested dispensation. Furthermore, concerning both points, I believe, with all due deference to any better judgment, that the answer should be affirmative. Concerning the first, such a response is clearly suggested by the concordant testimony of the spouses, by the testimony of witnesses, and by the medical examination. The declaration of the spouses. - When questioned about the conjugal duty, the woman, under oath, responded as follows: "François, on the first day, claimed fatigue as an excuse not to demand the fulfillment of the conjugal duty. He never demanded the fulfillment of the conjugal duties. I often made indirect requests to him out of discretion... I repeatedly told him that we were not married to remain so, that I desired children. I often reproached him, either verbally or through my attitude and tears, that I could not live like this... He would respond to me with disdain and contempt, often repeating that he did not love women, that he preferred a *poculum* to a woman.... I affirm, in the most absolute way, that my marriage with François was never consummated, and this is due to..."

[*Latin ed. p. 286*]

286. PARISIEN. My husband, who has never asked anything of me and

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has never attempted anything... I attribute the lack of consummation to his impotence. Everything leads me to believe that my husband is impotent: his reserve towards women and towards me, his wife; his passion for drinking." This actress, whom Parisien, the General Vicar of the Curia, wrote to the Prefect of Eure, considered "worthy of pity and endowed with virtues," while the husband, as he himself said, "appeared before the officials dressed in shabby clothes, and gave the appearance of a wine drinker." When questioned by the judge as to whether the marriage had been consummated, he replied: "I swear that the conjugal act has not been consummated, nor even begun. I swear it before God and upon the head of my father, who is dead." However, the cause of the lack of consummation, he himself said, was due to the wife, who constantly refused to fulfill her duty. "I immediately asked my wife to fulfill her conjugal duty, but she refused me, as she has always refused me since then, despite all my attempts. She gave me the reason that she was suffering." Therefore, given such testimonies presented by both parties, what should be applied is what Farinacus teaches excellently, in *Tractatus de Testibus*, question 66, number 4: "Witnesses who do not disagree in substance prove, because there is no variation or contradiction among them, and it is perhaps better that they do not completely agree in accidental matters, lest they seem premeditated; and therefore, if they are in agreement in effect and do not disagree in substance, nothing should be diminished in their credibility." But, someone might say, if the spouses behaved in this way, why did the wife not complain to her parents and reveal her miserable situation in the beginning? The answer is obvious. The mother had been deceased for several years when the marriage took place. If she were still alive, the girl would certainly have revealed the whole matter to her as soon as possible. "It would not have been so, before the judge she said, if I had been fortunate enough to still possess my mother; but I lost her towards..."

[*Latin ed. p. 287*]

PARISIEN. 287 "at the age of 14 years." The orator's father also, after a few years of marriage, met his death. "My father has been dead for five years. My father received no confidence from me regarding my relationship with my husband. I would have caused him unnecessary pain." Furthermore, the husband asserted to his wife that the lack of consummation of the marriage did not constitute grounds for divorce, and that many couples lived together in such a manner, which the ingenuous young woman believed to be true. Nevertheless, at a time even when it was not suspected, while conversing with a few friends about her situation, she stated: "I spoke of the lack of consummation of the marriage even before the separation. I spoke of it to my sister and her husband, to Mr. and Mrs. Villard, to Mr. Brossée, to Mr. Barat, to Mr. and Mrs. Rufte, all of whom I indicate as witnesses." And indeed, these witnesses completely confirmed the ac-

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tress's declaration, as we shall soon see from the transcripts. Seventh witness testimony. - Fifteen witnesses, either presented by the actress or summoned by the court, were examined. The defendant testified that he was not an adversary in the case, but neither did he wish to present witnesses in his defense, nor to produce documents. Furthermore, the seventh witness, without any exception, under oath declared that the actress was a woman of unimpeachable character, a Christian, modest, and truthful, to whom one should certainly give credence when she states that her marriage was not consummated. Examination of the body. - This, as is customary in the Parisian court, and which is neither prohibited by law, see Sánchez, Handbook VIII, section 113, paragraph 21, nor by the Sacred Congregation, was not conducted by midwives, but by two honest and learned experts, after the required ablution prescribed by the sacred canons, who then, under oath, before the judge, both in writing and verbally, declared their opinion. When questioned as to whether they were certain of the actress's integrity, they responded as follows: Dr. Julius Bucquoy: "It is for me without any doubt. My conviction is that there was no consummation of the marriage. I find in Mrs. Jeanne all the physical conditions that correspond to the assertion that the marriage was never consummated. Rarely have I found the condi-

[*Latin ed. p. 288*]

288. PARISIEN. The objections raised by the canons are as evident as in the same case. Another expert, Dr. Ferrand, responded: "Yes, it is my conviction that the marriage was not consummated, and that Madame Jeanne has preserved all the physical proofs of her virginity." From the foregoing statements, it is justly and rightly concluded that the non-consummation of the marriage in question is established. It remains to inquire about suitable causes for consulting the Holy See, so that it may deign to grant the desired dispensation. Since "the indissolubility of marriage is a doctrine common to theologians, according to natural and divine law," cf. Sánchez, *De Matrim.*, Book II, Disp. 15, n. 5, a dispensation in a marriage not yet consummated should not be granted by the Pope without a just and suitable cause. Various authors enumerate various such causes, although, without dissent, the following three are considered entirely suitable: the probability of impotence, alienation of affections, with the exclusion of any hope of reconciliation; the danger of incontinence. Furthermore, it is probable that Virum is impotent, as Julius Verchère, the husband of this woman's sister, explicitly states. Otherwise, who would ever admit that he has lived with a woman for nine years, sleeping in the same bed every night, without ever, as he himself confesses, having touched her, unless he suffered from impotence? Virum, of course, says that this happened because his wife constantly repelled him: this is believed by the Jew Apella. The alienation of affections between the spouses is so great that all hope of reconciliation

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is excluded, as is evidenced by their own words, and by the testimonies of those close to them: indeed, the civil divorce prevents the restoration of their common life. Finally, the danger of incontinence is evident to the actress, because she is a young woman who has barely exceeded her thirtieth year, and who supports herself through the art of typography, and therefore spends her entire days working among men.

[*Latin ed. p. 289*]

PARISIAN. 289 considers. As can be gathered from the records, piety preserved her from a fall. But who can deny that such youthful female innocence is more likely to be harmed than helped by such a situation? OBSERVATIONS OF THE DEFENDER OF MARRIAGE, BY DUTY. In the year 1882, on September 26th, Joanna, aged 18 years, was seduced by Francis, who was then in the twenty-first year of his age, with whom she had lived in a state of conjugal intimacy for about eight years, as she herself states, as if they were brother and sister. But in the year 1890, Francis brought Joanna before a civil court. In the judicial examination of December 27, 1892, Joanna testified: "The divorce was requested about two years ago. I requested it due to serious injury resulting from the non-consummation of the marriage and his bad conduct, because he often did not return home at night, remaining at the cabaret." However, Joanna and the witnesses she presented vehemently accused Francis of failing to fulfill his conjugal duties. He, in turn, stated: "I immediately asked my wife to fulfill her conjugal duty, but she refused me, as she has always refused me since, despite all my attempts. Not wanting to use violence, not wanting to force her, I did not go further." And in response to an official question from the defender, he stated: "Yes, she initially took the natural position, but immediately she pushed me away, and began to cry and to weep." It is therefore clear that at least one of the spouses is not striving for the truth. Furthermore, it is not conclusive, as is usually the case in such matters, that there is evidence of consummation in the woman's body. In fact, not three, but two doctors were employed for this purpose. This is contrary not only to natural decency, but also to the safer pursuit of truth. In such matters, a woman is the most expert. Then, the examination of the body was carried out by each, with an expert present; and from this collusion, testimony is obtained. *Acta, Vol. XXIX, p. CCCXLI.*

[*Latin ed. p. 290*]

290. PARISIANS. It was declared that they were knowledgeable. This is disapproved of in the Instruction, published by the Sacred Congregation of the Council on August 22, 1840, in sections § Designated Day and § Judge, under the heading "Defense?" where it is cautioned that the body should be examined SEPARATELY, and that SEPARATELY, individual midwives should report on signs of virginity or corruption, resulting from the ex-

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amination. With these considerations in mind, the following doubt was raised: Whether it is necessary to consult with the Most Holy Fathers regarding a dispensation from a marriage that is valid but not consummated, in this case. RESOLUTION. The Sacred Congregation of the Council, having considered the matter, decided to respond: Affirmative. MARRIAGE. DISPENSATION FROM MARRIAGE. May 2, 1896. Session 24, chapter 5, concerning the marriage of Casimirus. Casimirus, elected as an orator to propose laws in Hispania, entered into a marriage with Dolorosa, observing the proper Tridentina form; but alas! this marriage, which seemed to have begun auspiciously, had an unhappy outcome. Indeed, the wife, who, it is said, was perfectly suited for marriage and of sound health, appears to have been so inflamed by lust that she detests men, and engages in unions with women. It is reported, by the unanimous testimony of witnesses, that the marital customs were maintained for 29 days, that is, until January 27, 1883, but the conjugal union was frustrated because of Dolorosa's stubborn refusal to allow her husband to have intercourse with her, even though he earnestly desired it. Hence, the separation and cohabitation have continued to this day, which has been more bitter for the husband, since, meanwhile, witnesses report that the wife has abused the marriage in every way. SUMMARY OF THE FACTS.

[*Latin ed. p. 291*]

MADRID. She had been 291 ducats in debt, and then, in order to satisfy this debt, which the husband was forced to pay, as if to spare his own name!, she contracted a loan, and then, for the sake of marriage, she alienated jewels, necklaces, and other similar items. Subsequently, things worsened to the point that the woman, accused of theft, was taken to criminal judges, whose judgment is being considered at this time. The unfortunate man, in order to break this most hateful marital bond, humbly appealed to the Most Holy Prince, so that he might deign to dissolve such a marriage, as it was valid but not consummated.

A SYNOPTIC DISCUSSION: DEFENSE OF THE MAN. The advocate, first of all, addresses the difficulty, spontaneously arising, of how the woman, Dolorosa, could have entered into marriage and not wished to consummate it. He notes that both Dolorosa herself, and those present in Madrid who are witnesses, assert with full voice that her aversion to being joined, either to her husband or to any man, was such that it could never be changed or diminished. Indeed, some of the witnesses add that this woman detests the male sex, preferring the female sex before and after the marriage, fostering dishonorable affections with some woman. This, and more, is, according to the advocate, sufficient to demonstrate Dolorosa's reluctance to fulfill her marital duties to Casimiro, and the principal reason for such behavior. Therefore, he proceeds to a second question, which arises from the knowledge of the cause of the reluctance;

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namely, why did Dolorosa enter into marriage with Casimiro, if she so vehemently detested him, and opposed all men in general? And indeed, the opinion of some witnesses is that the woman's intention, in entering into this marriage, was to enjoy the husband's wealth. And in truth, she contracted a loan, unknown to her husband; indeed, she imitated the husband's handwriting, in order to obtain money for herself. Firm and certain is the woman's aversion to Casimiro,

[*Latin ed. p. 292*]

292 In MADRID, and concerning the end which she had set for herself in entering into marriage, it does not seem surprising to the speaker that the prayers, flatteries, and repeated counsel of friends did not succeed in diverting Dolorosa from her purpose. The Patron recounts that Casimir waited for whole days, months, and years; he spared no effort to bring Dolorosa to a good disposition, so that the marriage contracted with her might finally be consummated. He waited patiently, even falling ill, restraining his desires: he endured the injury inflicted upon him more than was right, lest he should completely lose the woman whom he had chosen as his wife. But the woman's obstinacy, and the manner of her conduct, finally put an end to his affection, piety, and patience; for not only do they deprive Casimir P. G. of his rightful due, but they also greatly damage his reputation and honor. Indeed, as she herself said before the judges in MADRID, she remains firm today in her intention of never uniting herself with Casimir. Furthermore, the Advocate continues, she remains today with a perverted inclination, preferring rather to indulge in other illicit and infamous desires, in order to satisfy her concupiscences, than to render due obedience to her husband. Indeed, she remains firm today in the single purpose she had set for herself in entering into marriage, namely, to use and abuse the name and wealth of Casimir, in order better to indulge her own nature and her wicked habits; and this is clearly confirmed by the unanimous testimony. The criminal investigations, which are now being instituted by the magistrates of MADRID against the woman, have finally put an end to Casimir's affection, piety, and patience towards Dolorosa; and these investigations seem certainly intended to stain the illustrious, honorable, and upright name of Casimir with infamy. It is certain and beyond doubt, as the Advocate states, that the marriage between Casimir and Dolorosa was not consummated, except insofar as it is evident from the words of the spouses themselves, from the unanimous agreement of the witnesses who are called to the trial, numbering twenty-four, and from the sworn testimony of three experts, who were appointed by the judges of MADRID.

[*Latin ed. p. 293*]

MADRID. 293. With the utmost diligence, according to the principles

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and criteria of medicine and surgery, they examined her on December 4th of the year 1895. Regarding the second question, the Advocate merely notes, based on the testimonies of the Doctors, and especially on that of the aforementioned Witness, Gabino Samaniego, the Sacristan, who, by order of the judges of Madrid, was appointed to examine the woman, that the perverse inclination of the woman herself can be rightly and clearly demonstrated, which was the principal cause for which Dolorosa constantly refused to fulfill the marital duty owed to Casimiro. Therefore, the statements of all the witnesses, which speak of the woman's bad character, receive confirmation even from the judgment of the Experts. Thus, the Advocate concludes, that there is sufficient reason to obtain a dispensation for Casimiro from the valid and unconsummated marriage. Furthermore, he says, there are reasonable and serious causes that suggest the requested dispensation. Foremost among these is the woman's obstinacy, her refusal to ever unite herself in marriage again, even with her husband. Indeed, when questioned by the judges of Madrid, whether she opposed the resolution of the marriage, Dolorosa replied that she did not oppose it, but rather, she strongly desired it. This obstinacy of the woman seems to force Casimiro, until the end of his life, or Dolorosa, to practice continence, which she has always professed, and for this reason, she entered into marriage. It seems to force Casimiro throughout his life, or Dolorosa, to never attain the ends of the marriage she contracted, such as are certainly the procreation of children and the remedy of concupiscence; and this, with the danger and detriment of her soul and body. Furthermore, the Advocate continues, there is a just and reasonable cause that suggests the dissolution of the valid marriage, namely, the way of living and acting of Dolorosa, which is not fitting for an honest woman, an honest wife, and which a man, of excellent character, marked by piety and dignity, would never be able to endure; and this would always be and would be...

[*Latin ed. p. 294*]

294. IN MADRID. The disputes, injuries, and scandals between husband and wife continue. The opinions of the witnesses are as numerous as there are witnesses. But, having mentioned these causes, the Advocate finally brings up a matter of the utmost importance and gravity, which is derived from the statements of the witnesses, namely, from the criminal investigations now being conducted in Madrid against Dolorosa, and which will be examined in the coming days before the Magistrates; and since her deceptions are fully established, she will certainly be judged guilty of a crime and thrown into prison. The Ordinary concurs with the Advocate's request.

OBSERVATIONS OF THE DEFENDER OF THE SACRAMENT OF MATRIMONY. To the Defender of the Sacrament of Matrimony, it seems almost unbelievable that a man so well versed in legal matters would never have considered that a marriage, after such a long interval, might be subject to

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dissolution, especially since that delay in bringing an action against the marriage is completely at odds with the present haste with which they are trying to resolve the dispute. What is more troubling to the Defender is the assertion that a judicial investigation into nullity is being undermined. Indeed, Benedict XIV, in the celebrated constitution *Dei miseratione*, not only strictly commands that the Defender of the Sacrament of Matrimony be present in matrimonial cases *ex officio*, but also cautions: "Whatever is done in court, if the Defender of the Matrimony has not been legitimately summoned or notified, we declare it null and void, and we wish it to be considered as null, void, and of no effect, as if that party who ought to have been summoned had not been summoned, and as if that party had not been summoned in accordance with the laws and prescriptions of canon law, which are absolutely necessary for the legitimate validity of the judgment." Indeed, the court in Madrid, having received the apostolic briefs, in which the Bishop was instructed to conduct the proceedings regarding the alleged non-consummation of the marriage and the causes for its dispensation, has observed the proper form of the Constitution of Benedict XIV *Dei miseratione* and the Instructions of the Holy Congregation of the year 1840.

[*Latin ed. p. 295*]

MATRIMONIAL. 295. The archdeacon Julian de Diego y Arcolea, the canon penitentiary Isidoro Estecha, and Donato Zimenez, the parish priest and inquisitor of the judges, entrusted Edward Calvo Gonzalez with the office of defender of the marriage, although he did not even consider it. Furthermore, the Advocate notes that it is entirely unclear what relevance this has to the present case, because the chancellor, while reporting the answers of the witnesses, completely omits the questions that were actually posed, contrary to the law. In the other examination of Dolorosa, the Advocate himself inserts the very questions that were posed, and from these, the Defender argues that the witnesses were so confused that they not only failed to reveal the truth, but moreover, they found that the answer they had prepared, whether it was consistent or inconsistent with the truth, was the answer that was demanded by the question. The Advocate laments that even the physical examination of the wife was not properly carried out, namely, according to the laws prescribed in the celebrated Supreme Sacred Congregation Instruction of August 22, 1840. In truth, the Advocate argues, the examination of the woman should be entrusted to three midwives, but only to one doctor, namely Gabino Samaniego y Sacristán. Moreover, since Casimirus and Dolorosa both desire the marriage to be dissolved, the power granted to them to choose their own experts is entirely inappropriate, and furthermore, the judicial doctors, Henry Capesino y Servocal, and Peter Calaberin y Calderin, cannot be included in the list of experts. Furthermore, according to the Advocate, the method used by the

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examining doctors was also inappropriate. For they did not swear, before carrying out the examination of the woman, that they would faithfully and diligently perform the task entrusted to them, without regard for the interests of either party, but only after the examination was completed, and after several days had passed since the complete examination, did they swear to tell the truth. The honest matron, who, not only according to the law of honesty, but also in order to eliminate the suspicion of collusion, should have been present, was not present. Indeed, she was not.

[*Latin ed. p. 296*]

296. The examiners judged a more suitable place for the examination to be found, than the house of Peter Calaberin. The physician, chosen by the *Dolorosa*, informed the Advocate. He stated that it is well known that women, on occasion, simulate virginity, even after having employed certain remedies before the examination by experts. Sánchez de Matrim, book 7, section 108, paragraph 8, writes: "Often, the eyes and hands (of the examiners) are deceived, especially because women employ many deceptions by which they appear to be virgins." Also, Zacchias, *Quaestiones Medico-Legales*, book 3, title 2, question 6, paragraph 1. Therefore, the Advocate urges the physicians, who are experts, not to be deceived, as they often are, by remedies, especially by a warm bath. Thus, Sánchez De Matrim, book 7, section 113, paragraph 11: "(There) it follows that a sound course of action is for the judge to strictly order the women, before they examine a woman concerning her virginity, to have her, in their presence, bathe in a sufficiently warm bath, and to delay the examination for as long as is necessary, so that if the woman's vulva has been compressed and constricted with a plaster, in order to appear as a virgin, it may be loosened. Because, when investigating the validity of a marriage, all possible proofs must be employed, and they ought rather to be superfluous than diminished, as I have shown in section 107, paragraph 1." Furthermore, all the matters considered in this investigation should be examined with greater diligence, according to the Advocate, because, besides the fact that the case concerns a woman who is said to be the most virgin of all, the examination takes place thirteen years after the supposed date of her hymen's rupture: and it is well known that the signs of violated virginity easily disappear over time, as Zacchias testifies. Nevertheless, it appears to the Defender that, from the evidence presented in the case of the *Dolorosa*, even though it was negligently handled, it is possible to discern both the deceptions employed by the *Dolorosa* to simulate virginity, and the signs of lost virginity, as can be gathered from the reports of the experts in the cases cited. Therefore, the Defender concludes that there is reason to suspect a simulation.

[*Latin ed. p. 297*]

MATRITEN. 297. Likewise, virginity, because, as Zacharias testifies,

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women, by means of certain astringent lotions, and with the application of other suitable medicines, so constrict and narrow the female organs, that they not only restore the virginity that was previously violated, but also surpass it by far. Therefore, the Defender [of the Faith] deems it superfluous to use necessary words in granting a dispensation; either because it is utterly useless to discuss the reasons for granting a dispensation, since the consummation of marriage is double; or because all the reasons presented rely on the testimony of witnesses, who have been so thoroughly discredited that their words can be of no value whatsoever. With these considerations in mind, the following question was proposed: Whether it is necessary to consult with the Most Holy Office regarding a dispensation from a valid but unconsummated marriage in this case. RESOLUTION. The Sacred Congregation, after deliberation on May 2, 1896, decided to respond: "Having reviewed the acts, and considering the circumstances present in the case, a positive response should be given to the Bishop." BRINDISI. PREEMINENCE. On July 25, 1896. By summary petitions. In the Cathedral of Brindisi, in the year 1818, it was established that there should be twenty-seven canons and twelve benefactors serving in said church; and also, there were established two common offerings, one commonly called the "large" (grossa), and the other the "small" (piccola). The "large" offering is attended by those who have a right to a benefice, while the "small" offering is attended by those who have a right to service, according to the intention of the Council of Trent. COMPENDIUM OF THE MATTER.

[*Latin ed. p. 298*]

298 BRINDISINA. Due to the laws enacted by the civil government in 1866 which suppressed the canonical institutions, the number of canons, along with their offices, was reduced to twelve; the number of benefices was reduced to six. Consequently, canons elected after this number were unable to enjoy the revenues of the mass, but only received, by right of servitude, small distributions from certain portions. For this reason, the Reverend Lopez was elected. He was promoted to the canonry by letters from the Most Reverend Archbishop Aguilar of Brindisi on September 17, 1884, and, upon receiving possession of this benefice, and after making the profession of faith with an oath, and having been received by the other canons with the active and passive vote, he was accepted as a brother within the Chapter. Furthermore, all the duties were imposed upon him, as upon the other canons, and the honors were granted to him. Also, concerning his place in the choir and precedence in the sacred functions, everything proceeded peacefully until the year 1894, when the Canon Lopez was granted a new bull, by which, according to a royal decree, he was to be admitted into the number of twelve canons, and the corresponding revenues were to be assigned to him. From this point

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onward, the disagreements, about which we are now inquiring, originated. Indeed, in the year 1891, the priest Fornaro, by Apostolic Bulls, which included a royal decree, obtained the right to the Canon of Theology, one of those still held in the aforementioned Cathedral Church by the usurping government. For two years, the aforementioned Fornaro, although other canons were elected above the number of twelve, did not raise any question concerning precedence, either in the choir or in processions; he raised the question after Lopez, as stated, was admitted in the year 1894 to the number of twelve canons; he objected, stating that he had obtained the right in the year 1891, whereas Lopez only in the year 1893, when, indeed, having obtained the royal decree, he truly obtained the canonical right, whereas before that he had only received certain revenues by right of servitude and by the generous concession of the Chapter from a small portion. This question was previously presented to the Cathedral Chapter, which, on May 5, 1894,

[*Latin ed. p. 299*]

BRUNDÜSINA 299. The Reverend Fornaro acquiesced to the prayers. Canon Lopez, appealing to the Tribunal of Brindisi, but the Canon Theologian, fearing that his rights had been disregarded, and because, as he himself said, the matter was being prolonged excessively, appealed to the Sacred Congregation of Rites. However, after considering various arguments, the Sacred Congregation responded on June 15th of the following year, stating "Upon request" of Canon Fornaro. Nevertheless, the question remained unresolved, since Canon Lopez, fearing that the matter might be further debated and resolved differently, refused to comply with the Bulls already obtained and supported by a regional decree, especially because the office of Penitentiary, which was being assigned to him, was being united with a new benefice. With this office assumed, it truly appeared that a new canonical benefice had been granted, and therefore, the time should not be counted from his admission to the chapter, which occurred in 1884. The Bishop was asked whether the office of He replied that, indeed, in ancient times, the Penitentiary had been a distinct benefice with its own revenues, apart from the common mass, or that from the beginning of this century, this benefice had ceased to exist, and that since 1821, the office of Penitentiary had been indiscriminately assigned to one or the other canon, whichever was more suitable; therefore, the union of this office with a specific benefice did not exist by right, but only de facto, that is, accidentally, and not by foundation. However, after carefully considering these newly presented arguments, the Sacred Congregation judged that it should not depart from its previous decisions; therefore, on August 24, 1894, a rescript was issued "In Decretis." Nevertheless, Canon Fornaro, through new letters, continued to insist that the matter be re-examined, proposing the following questions: 1. To whom does the right of precedence belong, to

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Canon Lopez or to Canon Fornaro, and therefore, to which canon does the right of succession in the vacant Deanery belong, according to the principle of seniority? 2. Has Canon Lopez, by the Bulls of 1894, become a "Neo-Canon"?

[*Latin ed. p. 300*]

300 BRUNDUSINA 3. Finally, whether repeated possession and profession of faith will bring fruit to Canon Lopez. The Archbishop, moreover, requests that the Sacred Congregation of the Council declare: I. That the Reverend Canon Lopez, even having accepted the office of Penitentiary, whether he possesses the title or not, shall remain in his previous precedence; II. That he be dispensed from obtaining other Bulls, even though those previously obtained may perhaps no longer be valid due to the excessive passage of time. Provided that the aforementioned Canon Lopez pays the sum of two hundred livres twice, although he has no special emolument for such an office. Synopsis of the Argument. The entire force of the Canon Theologian's argument rests on the fact of the recognition granted by the Civil Government through the Royal Decree. For he himself states in the printed book that, while the civil and ecclesiastical collation was granted to him in 1891, to Canon Lopez it was granted only in 1894; therefore, he is older and, indeed, possesses the right of precedence. To this point, he cites certain decrees of the Sacred Roman Congregation, in which it is established that the right of precedence is lost if, having relinquished a benefit previously obtained, someone acquires a new benefit. Therefore, he argues that Canon Lopez, who received the canonical prebend in 1894, cannot count the time from 1884, when he began to receive certain capitular revenues not by right of benefit, but by right of service. Hence, he concludes that a new profession of faith and a new oath must be required for the newly obtained canonical prebend. On the contrary, Canon Lopez asserts that canons do not issue Royal Decrees or Executions, but legitimate canonical institutions, which are demanded for legal execution. It is from these, not from those, that seniority in the canonry must be determined. And if he needed new Bulls, it was only to remedy the unjust vexation of the civil government, namely, to obtain the revenues of the canonry, which he would not otherwise obtain.

[*Latin ed. p. 301*]

BRUNDÜSINA 301. Praeterea, ipse testatur, quod non ex mera liberalitate capituli, sed ab anno 1884, habuerit certos redditus canonicales, ob vim canonicae institutionis in praebendam, quam ab autoritate ecclesiastica competente accepit, et quam capitulum approbavit; unde potest adducere argumentum ex statutis capitularium, in titulo "Dei Beneficiati," scilicet: "Di conseguenza la precedenza viene regolata, non secondo l'anzianità dell'ordine, ma secondo l'anzianità della loro ammissione e possesso

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alla loro porzione e participazione capitolare." Nec desit argumentum ex praxi vigenti, per cui tres viri capitulares, supra numerum duodenarii in capitulum cooptati, praecedentiam obtinuerunt, non respectu ad bullas a civili autoritate recognitas, sed respectu ad institutionem canonicam, et ita, ut seniores habiti, dignitates in capitulo consecuti sunt. Haec praxis viget etiam quoad emissionem fidei et iuramentum praestandum, quae non iterantur quando quis, antea in capitulum admissus, postea numerum praebendarum a Gubernio Civili servatarum ingreditur. Et hoc iure meritoque; siquidem in dicta cathedrali non habentur canonicatus distincti, praeter quatuor dignitates et praebendam theologalem. Ceteri enim canonicatus, neque vi fructuum praebendalium, neque vi tituli, neque nominis utpote alicuius sancti, aut pii fundatoris, sed numero distinguuntur et a possessore solent denominari; quippe in aequalem mensuram massae communi et oneribus participant. De hac constitutione praebendarum canonicalium amplissime Episcopus testatus est, referens, omnes pertinere ad ordinem presbyteralem. Ergo in casu non videtur applicandum decretum a S. Rit. C. sub die 18 Augusti anni 1792 editum, quo sancivit: "Canonicus dimittens canonicatum, ut alium in eadem Ecclesia obtineat, priorem amittit praecedentiam, ultimoque sedere debet in loco." Postulata vero Episcopi, quod spectat, res nonnullum facessit negotium si admittatur officium Poenitentiariae.

[*Latin ed. p. 302*]

302 In Brundusina, una praebenda non debet esse separata et non unita ad aliam, sed debeat esse plena, sive ab uno, sive ab altero canonicorum, sine ullo peculiali emolumento percepto. Dico "sive," quia iam fuit relatum quod olim praebenda Poenitentiaria debuit esse praebenda separata, sed haec consuetudo iam ab initio saeculi declinavit. Quamobrem, Canonicus Lopez potest retinere praebendam iam obtentam anno 1884, et assumere munus Poenitentiariae, auctum reddens massae communis, a quibus iniuste hactenus per usurpationem Gubernii civilis prohibitus fuerat. Unde non exsistit aliqua necessitas novarum Bullarum impetrandi; cum iam obtenta suum sortitae sint effectum ad vexationem redimendam auctoritatis civilis, non alio pacto admittentis ad certos redditus canonicales obtinendos. A iure communi vero non est alienum, aliquem in canonica praebenda institutum, ius aliquando habere, progressu temporis, ut alios locupletiores assequatur fructus, quin mutet titulum beneficii vel aliam obtineat praebendam; patet ex cap. 9 *De Constitutionibus*; cap. 25 *De Praebendis et Dignitatibus*, et praecipue cap. ult. *De Concess. Praeb.* in 6, quibus huic similis continetur facti species; prout passim commentantur Canonistae. Quam ob rem, cardo quaestionis haec est, nempe an sac. Lopez reapse Canonicus habendus sit et hactenus perseveret vi praebendae obtentae anno 1884, quam prosequitur retinere, explens officium Poenitentiariae. Quibus animadversis, quaesitum fuit quid esset

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quaestioni respondendum. RESOLUTIO Sacra Congregatio, re disceptato sub die 25 Iulii 1896, censuit respondere: iuxta votum Archiepiscopi, favore Canonici Lopez, praevio tamen examine, ut Officium Poenitentiariae consequi valeat.

[*Latin ed. p. 303*]

303 PHARENSIS LAWS, June 13th and July 25th, 1896, Session 25, Chapter 12, Concerning Reforms. SUMMARY OF FACTS. In the diocese of Pharensis, in Dalmatia, since the year 1886, a dispute has arisen between the parish priest, Cosimo Scarpa, and the municipality of Civitasveteris, commonly known as Stangarci, concerning the celebration of a solemn Mass on the day commemorating all the faithful departed, to be sung in the church serving as a cemetery, and also concerning the administration of certain alms collected in a designated box within the same oratory. The reason for this present contested dispute, the origin of which is explained by the following facts, is as follows. In the year 1838, up to which time the deceased were buried in the cemetery, which was part of the parish church, the municipal authority of Civitasveteris, in order to comply with imperial decrees that forbade the inhumation of the faithful in churches, arranged for the construction of a public cemetery on land generously donated, through the efforts and expenses of private citizens, as well as through its own expenses. This cemetery was intended to serve as a burial place for the faithful Catholics; and, complying with the wishes of the citizens, the municipality decided to adorn and, as it were, complete this structure, which was financed by offerings received and revenues derived from the use of the cemetery. In the year 1876, an oratory was dedicated to public worship under the title of the Most Sorrowful Virgin Mary; and, in order to promote devotion, this oratory was, over time, endowed with an altar that was permanently privileged, and with the grant of a plenary indulgence twice a year to the faithful. Each year, on the day commemorating all the departed, proper funeral ceremonies were solemnly celebrated, either by the parish priest himself or by someone delegated by him, with the expenses being paid by the municipality; and the offerings were taken from the box displayed in the church. This was the situation until the arrival of the present parish priest.

[*Latin ed. p. 304*]

304 PHARENSEM. Then the question arose concerning the right to celebrate such a funeral, namely, whether the parish priest should be considered as a municipal official and delegate, to whom, therefore, a salary, as if by mandate, would be paid by the municipality; or rather, it should be said that the funeral is performed by the parish priest, by right of his office, while the municipality, as administrator, delegates ecclesiastical authority to collect offerings from the faithful in the chapel, and to provide, in propor-

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tion to the funeral, a suitable salary. — Consequently, the parish priest continued to celebrate the funeral annually, demanding the customary alms from the municipality, which refused, claiming that it owed nothing to the parish priest, since it had not invited him to the funeral. — Therefore, the parish priest brought the municipality before a secular judge, to compel it to pay him the customary salary, but subsequently, perhaps disheartened by the prospect of obtaining his due, he appealed to the ecclesiastical court, and obtained a decree by which it was forbidden to all priests to celebrate Mass in the church of the cemetery, unless with the permission of the parish priest, as often as he deems it necessary. Against this decree, priests from the City of the Ancients appealed, to which the Bishop, now governing the Pharensem church, kindly acceded; however, on December 7, 1893, he issued a new decree in which, with regard to our matter, the following is stated: 1. That the parish dean may, either personally or through a substitute, celebrate the solemn Mass annually in the chapel of this cemetery; since such a right has been recognized by the municipality itself. 2. That it is permissible for both the municipality and any individual among the faithful to request a priest to celebrate Mass, but after the solemn Mass of the parish dean. Finally, it was noted that, although the municipality may choose a priest to celebrate Mass, it cannot nevertheless take the corresponding alms from the collection box in which alms are collected from the faithful, and the administration of which belongs solely to the parish priest; because the small church of the cemetery lacks its own pastor. This appears to be confirmed by the Sacred Congregation for the Council: "Alms and offerings..."

[*Latin ed. p. 305*]

"PHAREN. 305. Collectae in oratorio publico solitae, debentur capellano eius; ita tamen ut ratio reddatur Episcopo et convertantur in usum et cultum divinum ipsius cum approbatione Episcopi." — Auscul. 23 Augusti 1733. Tunc municipium putans ex hoc decreto suis iuribus praeiudicium factum fuisse, conquis tum est per oblatum memoriale Apostolico Nuntio in Austria Hungaria, qui videns in cassum cedere omnia consilia ad concordiam obtinendam inita, rem totam per tramitem Pontificiae Secretariae Status ad S. C. Congregationem cognoscendam transmisit. Quapropter proposita fuit quaestio sub hac dubitandi formula: 1. An sustineatur Episcopale decretum quoad utramque partem in casu. Et 2. Quatenus affirmative quomodo intelligi debeat locutio ad ora conveniente in casu.

Disceptatio Synoptica:

DEFENSIO PAROCHI. Parochus Civitatis Veteris negat exemptionem dictae ecclesiae coemeterii a parochiali iurisdictione; nam, ipse ait, etiamsi auctoritati municipali vere ius constet patronatus, tamen ei non competeret ius sacras functiones moderandi in dicta ecclesia, quum iura et officia

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patroni tantum sit iuxta illud tritum: "Patrono debetur honor, onus utilitasque, praesit, praesit, defendat, alatur egenus, vt non amplius." Sed ille prosequitur, contendens, nullimode oratorium esse iuris patronatus, siquidem hoc ius grati animi ergo a sacris canonibus introductum fuit pro fidelibus, qui de ecclesia suis donationibus optime fuissent meriti. Sed liberalitas nulla est quando quis suo proprio muneri, uti in casu, satis facit; re enim vera, auctoritas municipalis coemeterium erigens nihil aliud gessit quam edictis imperialibus saepe saepius promulgatis obtemperare. Quare ei ullimode competit hoc ius; nam "Patronum faciunt dos, aedificatio, fundus"; quae requisita, iuxta parochum, non concurrunt neque ob ecclesiam in coemeterio aedificatam. Non habetur dos, quia Acta, Tom. XXIX. rase. CCCXLI. 20.

[*Latin ed. p. 306*]

306 PHAREN. This church, which serves as a cemetery chapel, is maintained through the offerings of the faithful, contributing to its upkeep; it was not built through the efforts of the citizens, nor was it founded through a gift from a particular family. However, the municipality, whatever expenses it incurs, or continues to incur, deducts these from the revenues of the cemetery itself, the use of which is not entirely free for the citizens. Therefore, the parish priest, Scarpa, concludes that the municipal authority has no right of patronage over the cemetery church, especially since the aforementioned cemetery is exclusively Catholic and, therefore, an adjunct to the parish church. Indeed, according to canon law, a cemetery should be considered as necessarily annexed to the parish church and belonging to it, so that the Sacred Congregation of Councils has repeatedly decreed that all rights granted by canon law to individual parishes in their cemeteries should be transferred to the parish church in the case of public cemeteries, which, in modern times, are separated from the church, and that they should not be considered as being separated from the church. In this case, the application of this principle seems to have been established and is certain, given the uninterrupted custom until the year 1886, whereby the parish priest has been able to exercise his rights peacefully in the aforementioned church, with the consent of the municipality. Furthermore, the decisions of the Sacred Congregations do not invalidate this matter, especially in light of the Decree of Urbis et Orbis of the year 1703, which defines the rights of confraternities and establishes boundaries against the parish priests; for it is only a question of a church without a rector, which, therefore, necessarily falls under the jurisdiction of the parish priest, even by that very name (1). Then, turning to another part of the decree, he notes that the administration of ecclesiastical goods, even if they consist solely of alms, belongs to the parish priest or rector of the church, whether by customary law, by written local law, or by the civil law of the Austro-Hungarian Empire, and that the council of the parish church itself has no

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authority in this administration. Indeed, in the statutes of the diocese (1) The Decree of Urbis et Orbis of the year 1703 is mentioned in the note. See Vol. I, 591 and Vol. XXII, 474.

[*Latin ed. p. 307*]

PHAREN. 507, under the heading "De administratione ecclesiarum et oratoriorum," article XXX of the law concordat for the Austro-Hungarian Empire, the goods of the church or chapel are defined as: "The complex of goods destined for the maintenance of the sacred place and the exercise of divine worship." And in chapter IV, the following is read: "The parish priest or the chaplain of the church immediately administers the faculties of the individual churches in union with three laymen." Consistent with these provisions, the parish priest states that the decrees of civil law concerning the administration of ecclesiastical goods also apply, under which name are included all alms, even those of small value, because the quantity does not change, nor can it change, their nature and character. Therefore, the parish priest observes, in order for the municipality to maintain its intention and to support it with some right, it must change the nature of these alms and declare them to be civil. But this is false, he adds, because the circumstances of place and time in which the alms are collected give them the nature and intention of ecclesiastical offerings. Finally, he states that if the Bishop has permitted the administration of these alms to be held by the municipal authority, as long as that authority legitimately uses them, nothing prevents that authority from revoking this right, since it is evident that the administrators abuse the privilege granted to them out of benevolence. Finally, with regard to the second question, he says that there is no argument to support the proposed question. For it does not pertain to the civil authority to determine what is the appropriate hour for any function, but to the ecclesiastical authority, and even more so when, as in our case, the hour of the *octava* has already been established by custom, a custom that the parish priest himself cannot, at his own discretion, change. Moreover, in his letters of commendation, the Bishop strongly insists that the request of the municipality be rejected by the Sacred Congregation, since it is based on no right, but on envy, which has already caused trouble for the parish priest.

[*Latin ed. p. 308*]

308. PHAREN. The curator raises the issue, noting that the excitement has subsided. He states that the arguments presented by the parish priest are valid and well-founded, and he explains the actions of the municipality up to the year 1886. Regarding the time of the funeral, the Bishop observes that it should be determined in a manner appropriate for a parish funeral, which, celebrated in the parish church near the cemetery, should precede the sacred rites performed by other priests, in accordance with the decrees

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of the City and the World, number 19, by virtue of which, even in chapels not dependent on a parish priest, Mass cannot be celebrated on feast days before the parish Mass. He further notes that the solemn day of commemoration of all the faithful departed should be truly festive, "even without a holiday in the forum."

DEFENSE OF THE MUNICIPALITY. On the contrary, the municipality's advocate first points out that the issue at hand concerns non-parochial functions, to which the celebration of a funeral on the Commemoration of All the Faithful Departed, consisting of a solemn Mass for the repose of the souls and a ritual absolution, should be added; these functions, as they do not involve the exercise of jurisdiction, can be performed by any priest. Furthermore, he insists that we are dealing with non-parochial functions to be celebrated outside the parish church; and indeed, in a church separate from the parish church, built with lay property, to which patronal rights are inherent by virtue of its construction, and declared inviolable by sacred canons. In law, he says, patronage, which is the right belonging to the founder of a church, is introduced by sacred canons as a sign of gratitude, acquired through the building, endowment, or foundation of the church, according to the gloss's verse: "Patronum faciunt dos, aedificatio, fundus" (A gift, a building, and land make a patron); and this right is acquired by the very act of building the church, even without any express reservation. This is what Pope Clement III teaches in chapter 25 of title "De iur." (On Rights), stating: "If anyone builds a church with the consent of the diocesan Bishop..."

[*Latin ed. p. 309*]

PHAREN. 309, "he who has built [a church] acquires the right of patronage." The advocate argues that, if it is established that someone has founded a church, whether that someone is a physical person or a moral person, it is sufficiently proven that he is the patron. Indeed, the advocate insists that, in the case where a community, with its own revenues, has built a chapel or church, connected to a new cemetery, no one would dispute that. However, the patron observes that the municipal authority, in constructing the cemetery, could have refrained from building the church, and that, since the religion of the community is *catholica*, interpreting the will of the people, it desired to complete the cemetery by adding a church for the functions of *catholic* worship, with the consent and approval of the diocesan Bishop. Therefore, the advocate argues, the episcopal decree has granted to the parish priest what the community, as a lay patron, had taken away. For the parish priest claimed the right to celebrate funerals in commemoration of all the faithful deceased in the patronal church, separate from the parish church, and the patron was denied the right to perform non-parochial functions in his own church. Therefore, according to the patron, the episcopal decree is doubtful, and whether it can be maintained

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in a case concerning a question that has been debated many times, namely, whether a public chapel or church founded within the limits of a parish, especially if it is a patronal church, has dependence and subjection to the parish church in functions directed towards stimulating the piety of the faithful. To this question, the advocate says, the answer is certainly negative, based on chapter *fin.* of the *de off. archid*, where it is expressly stated: "Churches located within the limits of a parish do not in any way belong to it, lest matters concerning parochial rights be raised." To this, the constant opinion of the doctors unanimously affirms that all churches, even if located within the limits of a parish church, are entirely independent from the parish priest in functions that are not merely parochial, because they are not subject to him in any way. Cardinal De Luca (Depar. disc. 31 n. 4) teaches: "And it was not a question of parochial rights or functions, but of solemnities pertaining to devotion and to the greater glory of the church."

[*Latin ed. p. 310*]

310. Furthermore, any incentive for works of piety, in which actions, whether undertaken out of devotion or otherwise, and which do not pertain to or involve the parish, and whenever deviation from the ritual occurs, etc., cannot be prevented or imposed by him against the will of the parties involved. Indeed, chapels located within the boundaries of a parish are not considered subject to that parish, nor do they have any dependence upon it, unless established by the founding document, legitimate custom, or other special provision. The speaker believes he has demonstrated this point with the decree of the Urbis and Orbis [presumably referring to a local or regional ecclesiastical authority], issued in the year 1703, which addressed the question: "Are confraternities established in chapels, whether public or private, and separate from parish churches, to have the aforementioned dependence on the parish priest regarding these functions?" The answer was: No. Furthermore, in a document from the Sacred Congregation in Reatina on January 12, 1844, questions were posed: I. Is it permissible for a chaplain to independently conduct novenas, triduums, and other functions from the parish priest? II. Is it permissible for the same chaplain to solemnly celebrate Mass independently from the parish priest in such a case? The answer was: To both questions, Affirmative, in all cases. The reason for this law, according to the speaker, is clear: no church, except for the cathedral, is founded with the intention of being subject to another church, even if founded within the boundaries of its parish; therefore, except for parochial rights, no other rights belong to the parish priest in a church founded within the boundaries of his parish. However, the speaker argues, if a funeral in commemoration of all the faithful departed is to be considered among the parochial functions, it does not follow that the parish priest can perform parochial functions in the patronal church. If such functions are performed by the parish priest, they must be done by him in his own

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church, because the parish priest cannot exercise his jurisdiction in the church of others without their consent. This was defined in the aforementioned decrees by the Sacred Congregation of Rites, in question 17, which asks: "Can the parish priest, without the consent of the brethren, teach Christian doctrine in these churches and chapels, public or private, which are separate from the parish church?" The answer was: No.

[*Latin ed. p. 311*]

PHAREN. 311 The procurator observes, citing the text in chapter "Dilectus" of the book "De cap. monac.," the decision of the Sacred Roman Rota, 214, paragraph 12, and other resolutions cited by Pignatelli in "Consilia," volume 5, that a distinction must be made between churches or chapels that are subject to the parish church, because they are founded, constructed, or endowed from its goods and revenues, or are united to it; and between churches or chapels that are separate and in no way subject to the parish church, because they are founded, constructed, and endowed with the property of laypersons, as is the case here. Those resolutions are to be understood with regard to churches founded from the property of laypersons; for there, the parish priest cannot perform non-parochial functions, the exercise of which pertains to the rectors of those churches. And, according to the speaker, the authority for justifying the controversial decree presented by the Bishop of Pharensi in the official information of May 24, 1895, Berengo's "Enchiridion parochorum," is to be understood in this respect: "No sacred function of any kind can be performed except by the parish priest in the parish church or in churches or chapels that are dependent on it, so that all functions whatsoever belong to the parish priest himself in those churches or chapels." Then, recalling the reasons themselves presented in the decree, the speaker notes that the Bishop warns: "lest, with a different procedure, the faithful be led away from being present at the same [function]," and that neither the Bishop nor the parish priest can obligate the faithful to attend non-parochial functions, especially since on the same day, the parish priest is accustomed to celebrate another solemn function in the parish church, to which it is fitting for the faithful to attend. Since the Bishop's decree prohibits the celebration of private Masses before the celebration of the parish funeral, the speaker notes that the Bishop could establish by a synodal decree that on holy days, Masses should not be celebrated in rural chapels and churches, unless a Mass has been celebrated in the parish church, as declared by the Sacred Congregation of Councils in "S. Agathae Cothorum" on May 25, 1652, and in "Camerinen" on August 30, 1704, provided that...

[*Latin ed. p. 312*]

312. The funeral should be celebrated at an opportune time, but this is not the case here. This does not concern a holy day of precept, by which the

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faithful are obligated to attend Mass. Because the Bishop, in a letter to the Most Holy Office dated May 25, 1895, declared that he had not wished to establish new rights in favor of the parish priest by decree, and presented a document, namely the testimony of Bertoldi Illisé, formerly the administrator of the parish of Civitasveteris, to prove the parish priest's right to celebrate funerals in the church of the cemetery without dependence on municipal authority. The author notes that it is futile to suggest a prescription in favor of the parish priest, since it is well known that "acts not necessary, but merely facultative, do not give rise to a prescription," and since the time elapsed from 1876 to 1885 is too short to give rise to any prescription whatsoever. For this purpose, he recalls the case of Balneoregion concerning the oratory and its sacred functions. In the middle of the estate commonly called "d'Agliano," there was a sacred oratory dedicated to the Blessed Virgin of Grace, with a single altar attached to the estate's barn. The nuns of the Asceterii del buon Gesù, the former owners of the estate, restored the aforementioned oratory from its foundations, and for the spiritual benefit of the people, they celebrated Mass in the same chapel on holy days of precept. In the year 1809, when the assets of pious institutions were confiscated, the estate itself passed into the ownership of Cardinal de Simoni, and from his heir, in the year 1852, it was transferred to Sir Peter Valentini by a contract of sale, in which all rights were transferred to the seller. When the pious Sir Valentini wished to celebrate Mass on holy days at his own expense, the parish priest of the territory insisted that the right to celebrate Mass on the principal feast day, which was celebrated in the aforementioned oratory on the second day of Pentecost, belonged to him, claiming that he had possessed this right since the year 1800, that is, for 64 years. This case was brought before the court on May 28, 1874, under the following questions: "I. Is it permissible for the Knight to celebrate solemn Masses and other non-parochial functions, especially on the second day of Pentecost, in a public oratory, through a chaplain?"

[*Latin ed. p. 313*]

PHAREN. 313 and other priests, independently of the parish priest, in case II. Whether and how it is permissible for the same person to retain the keys of the oratory in case II? The response was from the Sacred Congregation of the Council: — To I. Affirmative, according to the form of the decree of the city and the Holy See. Sacred Congregation of Rites, December 10, 1703. — To II. Affirmative. Regarding another part of the decree, in which the Bishop granted the aforementioned decree to the parish priest the right to administer the offerings of the faithful in the same church cemetery, collected during the sacred functions, invoking the disposition of Article XXX of the Concordat laws and the resolution of the Sacred Congregation in Ascoli on August 23, 1733, the patron reports what the municipality itself brought to his attention in a document given to the apostolic nuncio,

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namely: that the criterion used by the diocesan authority cannot be applied to the money collected in the cemetery box, because neither the provisions of Article XXX of the Concordat can be applied to this money, nor the alleged resolution of Ascoli on August 23, 1733. It concerns a small amount of money, collected from the faithful, in order to maintain the dignity of the cemetery, together with the municipality. Therefore, it cannot be deduced how this small sum of money can be subject to Article XXX of the Concordat, which states: "The administration of ecclesiastical goods shall be with those to whom it pertains according to the canons." Nor can it be said that the episcopal thesis favors the decision in Ascoli on August 23, 1733. To this objection, the patron responds with the words of St. Cyprian, *Prael. lib. III, tit. XXX, n. 23*: — "If it is asked to whom the offerings belong, it must be said that, by common law, the offerings made within the limits of the parish, whether in the parish church, or in a private oratory, or to any image, belong to the parish priest of the place. For he has a founded intention in the law. Thus, the doctors commonly teach. But in this matter, the following must be noted. 1. The aforementioned principle has had its full force as long as the use of tithes was in force. But today, especially, local customs must be taken into account, by which it has been established that the offerings made to oratories or pious places are administered by those to whom the care of the place has been entrusted, under the authority, or at least the supervision, of the Bishop. In this matter, however..."

[*Latin ed. p. 314*]

314. It must be borne in mind that the decree of the Sacred Congregation of the Council, published in 1703, concerning parochial rights and privileges between pastors and lay confraternities, and their chaplains, should be considered. In question 23 of the decree, when it was asked whether a pastor could intervene in the administration of offerings and alms, or retain the key to the chests in which these are collected or received in frequently mentioned churches, the answer was negative. 2°. "The intention of the faithful who offer [must be] the principal thing to be considered." The patron, however, endeavors to prove that the custom in favor of the municipality has been valid, based on these words of the decree: "since this church does not have its own chaplain or rector." From this, he concludes that these offerings do not pertain to the pastor, but should be attributed to the chaplain or rector of the church itself. Indeed, it is clear that the intention of the faithful was to offer these as a voluntary contribution to support the greater expenses for the proper maintenance of the cemetery. And since we are dealing with a very small sum of a few florins annually, to which a larger sum must be added for the proper maintenance of the cemetery, to be spent annually from the revenues of the community, the municipal authority, which is powerful in its right to administer the larger sum, must also have the right to administer the smaller sum, given that it

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has been offered for the same purpose, for the accessory must follow the nature of the principal. Therefore, the patron insists, from the beginning of the church's cemetery until the present, the municipal authority has administered these offerings without contradiction, and has administered them rather as civil offerings than as purely ecclesiastical offerings. The chest exposed has been kept to collect voluntary offerings for the proper maintenance of the cemetery in the same way that offerings of the faithful are collected in churches for the celebration of a particular feast, which are received and administered by those who are in charge of the feast, without dependence on the pastors. Since the municipality has petitioned the Ordinary to appoint a rector for the church, to whom the administration of the offerings pertains, the municipal authority insists that its rights remain unimpaired.

[*Latin ed. p. 315*]

PHAREN. 315: Concerning the question of offerings: meanwhile, the aforementioned state of possession remains, as it was before. Another doubt arises: "How should the phrase 'at a convenient time' be understood in this case?" The advocate notes that the phrase "at a convenient time" is too broad and indefinite. Therefore, the phrase "at a convenient time" can be translated as "at a suitable hour, a reasonable hour, an hour agreed upon by the parties involved," the advocate observes, especially when, as in this case, each party believes that their right is established by these words. The prescription of a "convenient hour" being thus vaguely defined, it also concerns the convenience of the people and the parish priest, and therefore, the advocate points out, it could be understood that the prescription made to the parish priest to celebrate the funeral in memory of all the faithful departed is for the convenience of the people, that is, at the hour that the moderators of the community have decided upon, or, conversely, that an absolute discretion is permitted to the parish priest to determine the hour he prefers, even midday, thereby depriving other priests of the opportunity to celebrate that day in the cemetery church. Indeed, the advocate argues, many circumstances could lead the parish priest to suggest celebrating the annual funeral in the cemetery church at midday. It is established that the parish priest celebrates another solemn funeral each year in the parish church on the same day of commemoration of all the departed; therefore, if he is allowed to celebrate the funeral in the cemetery church afterwards, it follows that the funeral in the cemetery church can only be celebrated at eleven o'clock, and extend to almost midday. Thus, an obstacle has been created, the advocate continues, for other priests to celebrate that day in the cemetery church, and for the faithful to offer prayers for the souls of the departed through the application of Masses at the altar of privileges. Finally, an obstacle has been placed in the way of those who wish to receive the plenary indulgence by visiting that church, and who wish to

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receive the sacraments at the early morning hour. Therefore, the advocate finally implores that this "convenient hour" be determined by the Most Reverend Fathers. With these observations, the proposed measures must be reconsidered.

[*Latin ed. p. 316*]

316. PHAREN. *Dubia I*. Whether the Episcopal decree can be maintained, in both its aspects, in this case, and to what extent. I. Affirmative. II. It is not necessary to respond.

RESOLUTION. The Holy Congregation, after deliberation, on July 25, 1896, judged it fitting to respond as follows: To I. Affirmative, and in the intended sense. To II. It is not necessary to respond.

FROM THE HOLY CONGREGATION OF THE ROMAN AND UNIVERSAL INQUISITION. A doubt concerning the wine to be used in the Holy Sacrifice of the Mass. August 6, 1896.

Most Blessed Father, Silverius, titular Bishop of Gamaca, auxiliary to the Reverend Provincial of the Diocese of Mariana in Brazil, prostrate before Your Holiness, humbly presents the following:

In Brazil, it is most difficult to obtain true wine for the celebration of the Holy Mass, and it is almost impossible to distinguish it from adulterated wine, unless it is made in the same region. Indeed, the grapes in these places are so weak and watery that, in order to obtain a tolerable wine, it is necessary to add something from the plant, which is commonly called *canne de assugar* (sugar cane), to the must; and even this wine, made in this way, is the wine that priests commonly use in the Holy Sacrifice of the Mass.

Now, having learned of the response of the Holy Roman and Universal Inquisition, given on the fourth day of the week, July 25, 1891, doubts and anxieties of conscience have arisen. Therefore, the humble petitioner most earnestly implores that Your Holiness would deign to declare whether wine made in this way can be safely used for the Holy Sacrifice of the Mass, or not.

[*Latin ed. p. 317*]

FROM St. Alphonsus Liguori, *Homo Apostolicus*, 1837.

ON the feast day of Thursday, the 317th day of the year, August 5, 1896. In the General Congregation of the Holy Roman and Universal Inquisition, after the aforementioned matter was presented, and with the vote of the Most Reverend Consultors, the Eminent and Most Reverend Cardinals Inquisitors General decreed that: Instead of extracting the saccharine substance from the sugarcane stalk, commonly known as sugarcane, it is preferable to add spirit distilled from grapes, provided that it is extracted from the grape itself, and that the quantity added to it does not exceed the proportion of twelve to one hundred of the amount of wine naturally

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contained therein; such a mixture should be made when the fermentation has begun to subside, as they say. On the following day, Friday, the 1st day of the said month, August 7th, the Most Holy Pope Leo, by the Divine Providence, XIII, in his customary audience with the Reverend Father Doctor, the Assessor of the Holy Office, deigned to approve the resolution of the Eminent Fathers.

JOSEPH MANCINI, Notary of the Holy Roman and Universal Inquisition.

DOUBTS concerning the wine to be used in the Holy Sacrifice of the Mass. August 6, 1896.

Most Blessed Father, the Archbishop of Tarragona in Spain, humbly prostrates himself before Your Holiness and explains that the region of Tarragona abounds in the best wines, so that the trade in wines extends to foreign nations, and that many people, especially in Americae, purchase wine from our vintners and merchants for the purpose of preparing it for the Holy Sacrifice of the Mass. But the doubt on this matter, which was recently raised by the Reverend Father Bishop of Massiliensi, and the response given by the Holy Roman and Universal Inquisition on Thursday, July 30, 1890, concerning this matter, has caused great concern and anxiety to the vintners and merchants themselves. For the sweet wines, which are produced in this region and which are greatly desired by the priests for the celebration of the Mass, after...

[*Latin ed. p. 318*]

318 FROM the Sacred Congregation for the Inquisition, the initial fermentation already exceeds twelve degrees of alcoholic strength, a level reached by wines from Marseilles, and without the addition of alcoholic extract. Nevertheless, in order that these generous and sweet wines, endowed with a greater strength than those from Marseilles, may be safely exported to foreign lands, it is necessary that they possess eighteen degrees of alcoholic strength; otherwise, owing to their very sweetness, they are susceptible to new fermentations, and, especially during sea transport, they deteriorate considerably. For this reason, our vintners and merchants, and among them Augustine Müller, a man of religion highly esteemed, implore the favor of that same authority, similar to the one granted to the Bishop of Marseilles, namely, the faculty of strengthening with spirit, or alcohol, extracted from the grape, especially sweet wines, so that those which naturally reach more or less fifteen degrees of alcoholic strength, may increase to eighteen. In this way, their corruption, which they are prone to undergo through repeated fermentations, is prevented, and they can be more safely transported to foreign lands which lack suitable wine for the proper celebration of the Holy Mass. Furthermore, as is said, in some regions of Spain, an ancient custom prevails whereby several priests prepare wine for the Sacrifice of the Holy Mass, either by evaporating the must or by drying the

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grapes in the sun; this practice appears contrary to the declaration of the Holy Office of July 22, 1706, concerning wine made from grapes that have undergone a pressing. With these matters in mind, in order to remove any doubt concerning a matter of such importance, the Archbishop humbly requests that the following be clarified. I. Whether, for the preservation of the aforementioned wines, especially the sweet ones, it is permissible to add only spirit or alcohol extracted from the grape, so that they may reach approximately seventeen or eighteen degrees of alcoholic strength: and whether, as a result, they would cease to be suitable material for the Sacrifice of the Holy Mass. II. Whether it is permissible, for the celebration of the Holy Mass, to use wine obtained from must that has been condensed by fire before undergoing alcoholic fermentation. Thursday, August 6, 1896. In the General Congregation of the Holy Roman and Universal Inquisition, the aforementioned matters were presented for consideration.

[*Latin ed. p. 319*]

319 By the vote of the most Reverend DD. Consultors, the Eminent and Reverend Lords Cardinals, Inquisitors General, have decided to respond as follows: To I. Considering the newly presented information, provided that in the case in question, the spirit extracted is from the grape, and the quantity of alcohol added, together with that which the wine in question naturally contains, does not exceed the proportion of seventeen or eighteen to one hundred, and the mixture is made when the tumultuous fermentation, as they say, has begun to subside; nothing prevents the same wine from being used in the Sacrifice of the Mass. To II. It is permissible, provided that this process does not exclude alcoholic fermentation, and that the fermentation can naturally be obtained, and is in fact obtained. On the following Saturday, the 7th day of the aforementioned month, the Most Holy Lord Pope Leo, by Divine Providence, XIII, in his usual audience, graciously approved the resolutions of the Reverend Fathers which had been presented to him by the Reverend Father Assessor of the Holy Office (1). FROM THE HOLY GENERAL INQUISITION. Jos. Mancini, Secretary of the Holy Roman and Universal Inquisition. FROM THE HOLY CONGREGATION OF RITES OF ROME, or PARIS. Concerning the beatification or canonization of the Venerable Servant of God, Magdalene Sophia Barat, foundress of the Society of the Sisters of the Sacred Heart of Jesus. The writings which are attributed to the Venerable Servant of God, Magdalene Sophia Barat, and which, after duly conducted investigations, were presented to the Sacred Congregation of Rites, so that a review and examination of them might be instituted for the purpose of drafting decrees, are described in a separate list. When the aforementioned Cardinal, Prefect in place of and by proxy of the Eminent and Reverend Lords Cardinals, Raphael Monaco of Vaux, Relator of the Cause, in the ordinary meetings of the aforementioned Sacred Congregation, held on the undersigned date

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at the Vatican, proposed a question for discussion regarding the review of these writings; the Eminent and Reverend Fathers, who are in charge of safeguarding the sacred rites, after mature deliberation and after hearing the Reverend Father Gustavo Persiani, acting in his office as Promoter of the Holy Faith (1), Regarding the wine to be used in the Holy Sacrifice of the Mass, see the responses of the Holy Congregation of the Holy Roman and Universal Inquisition, collected in Volume XXIII, page 699, and Volume XXV, page 441.

[*Latin ed. p. 320*]

E X 320 S « Regarding the matter under consideration, they judged it necessary to write: "Nothing prevents proceeding further; but the writings shall not be published, without the consent of the Congregation, and with due deliberation; reserving the power to oppose the Promoter of the Faith, if and to the extent that it is legally permissible." On June 23, 1896. Subsequently, I, having subscribed a report on these matters to His Most Holy Lord Leo XIII, Pope, His Holiness approved and confirmed the Decree of the aforementioned Sacred Congregation on June 7 of the same year. C. CARD. ALOISI-MASELLA, S.R.C. Prefect. L. * S. A. TRIPEPI, S.R.C. Secretary. FROM THE HOLY CONGREGATION FOR INDULGENCES, MEDIOLANUM. Concerning whether Indulgences are lost if crosses and rosaries, etc., are sold. On July 10, 1896. Although this Holy Congregation, having decreed on July 16, 1887, that Indulgences and Sacred Relics must be given entirely free of charge to the faithful, so that if anything is demanded or received under any pretext, the Indulgences attached to those things are lost; nevertheless, this Holy Congregation humbly requests a solution to the following doubts: I. Do Indulgences for crosses, rosaries, etc., cease to be valid if someone, upon purchasing them, asks the seller to have them blessed in his name, promising to pay the price and all expenses of transmission, at the very moment when those things, already blessed, are delivered to him? And to this, the answer is negative. II. Do Indulgences for crosses, rosaries, etc., cease to be valid if someone, foreseeing that they will be required, already blessed, on a certain occasion, such as a large gathering of the faithful, takes care to have them blessed in advance for those who will request them, after having reimbursed the expenses incurred? The Sacred Congregation for Indulgences and Sacred Relics, having also heard the opinion of one of the Consultors, ordered that the aforementioned doubts be answered on July 10, 1896: To I. Negative. To II. Affirmative. Given at Rome, from the Secretariat of the aforementioned Holy Congregation, on the day and year as above. ANDREAS CARD. STEINHUBER, Prefect. L. © S. S ALEXANDER, Archbishop of Nicopolis,

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Secretary.

[*Latin ed. p. 321*]

321 FROM THE HOLY CONGREGATION OF THE COUNCIL OF TRENT, OF THE HOLY OFFICE, NEOGRANATEN. OF JURISDICTION, May 2, 1896. Session 21, chapter 4, Concerning Reforms. In the archdiocese of the Holy Faith, Pope Gregory XVI, by decree of the Sacred Consistory of December 10, 1833, established a suffragan see, with the following wording: "In the Holy Faith in South America, the erection of a suffragan see." "The vastness of the Holy Faith diocese in South America, the number of provinces it comprises, the distance, and the difficulty of travel, make it necessary that, for the more convenient administration of the sacraments, and for the conversion of the non-believers dwelling there, not one, but several pastors be present. Since, considering the present circumstances, the erection of cathedrals in those parts cannot be obtained here and now, in order to consult, by the best possible means, the spiritual good of those people, it pleased the Most Holy Pope Gregory XVI, Supreme Pontiff, in the aforementioned Holy Faith diocese, to establish, in perpetuity, a titular bishop in the parts inhabited by non-believers; especially with this intention, that even if the church should be left without a pastor, there should be someone to properly perform all that which pertains to the order of bishops. Therefore, having carefully considered all these things, I, the undersigned, secretary responsible for the affairs of the aforementioned Sacred Congregation, refer that the same Holiness decreed the erection of a suffragan see in the diocese of the Holy Faith, now called Casanare, for one titular bishop in the parts inhabited by non-believers, who shall reside in the aforementioned province of Casanare, and in summary, this is the fact. Acts. Vol. XXIX. page CCCXLI1. 21.

[*Latin ed. p. 322*]

322. The Most Reverend Archbishop of the Holy Office, at his discretion, may, having been granted this authority, whenever the office is vacant, recommend a clergyman of merit and suitable qualities, whom he himself deems fit for this office, to be considered for the position. However, that the Bishop in office may be able to maintain the splendor of his dignity in a manner befitting his station, the Most Holy Lord has deigned to assign to him a suitable sum of six thousand escudos annually, to be collected from the episcopal revenues of the Holy Office. Furthermore, the decree establishing this Auxiliary Bishop's See shall be considered to be in effect as if Apostolic Letters had been issued concerning it, and it is ordered that it be recorded and included in the official acts of the same Sacred Congregation. Given in Rome this 9th day of December, in the year of Our Lord 1833."

The Bishop Moyses Higuera, a party in this dispute, asserted that his

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office and dignity had been enhanced by this, contrary to the assertion of Archbishop Herrera of the Holy Office today, primarily because Higuera had been designated as an auxiliary to the then-Archbishop, the Most Reverend Vincent Arbelaez of Arbealez.

Regarding our matter, the Bull states: "Let it be known to all, that in the year from the Nativity of Our Lord Jesus Christ 1876, on the 8th day of April, during the thirty-second year of the pontificate of Our Most Holy Father Pope Pius IX, I, the undersigned official, have seen and read certain Apostolic Letters, sealed with the leaden seal, of the following tenor: 'Pius, Bishop, servant of the servants of God, to our beloved son Moyses Higuera, elected Metropolitan, greetings and the Apostolic blessing. We hereby appoint and ordain you as Bishop and Pastor of the Metropolitan Church, fully entrusting to you the care, governance, and administration of this Church, both in spiritual and temporal matters, so that you may also assist our venerable brother, Vincent Arbelaez, Archbishop of the Holy Office of Bogota, in his pontificate...' "

[*Latin ed. p. 323*]

To the end that you may be able to assist in the exercise of such duties and other pastoral functions in the city and archdiocese of Santa Fe of Bogotá, especially for missions in Casanare, or elsewhere, as the Archbishop himself may judge best to accomplish in the Lord; yet so that, with the consent and license only of the aforementioned Archbishop Vincent, you may exercise pontifical functions and perform other episcopal duties in that city and archdiocese, according to the Decree of the Sacred Congregation Consistorial approved by us, by the present authority, we constitute and appoint you, and furthermore, in accordance with the agreement unanimously concluded at the last provincial council held by the prelates of Colombia, we assign to you, with the customary and appropriate sum of fifteen thousand francs of that currency, from the entire tithe of the same Archdiocese, this sum already attributed to you by authority and in virtue of the foregoing, "in Him who gives thanks and bestows rewards."

Meanwhile, on July 29, 1880, Pope Leo XIII established the new Diocese of Tunja, by detaching the province of Casanare from the old Archdiocese of Santa Fe, of which we have spoken in the aforementioned Decrees, and the Bishop Higuera obtained it as his place of residence. This new diocese, not yet having its own pastor, had a renunciant administrator, who remained in it after the arrival of the Bishop, fulfilling various duties, until the year 1884, when, by a Bull of June 24 of that same year, he obtained the Decanship of the Cathedral Chapter in the Archdiocese of Santa Fe. After the Archbishop Arbealez entered the way of all flesh, three others succeeded him as Archbishops; among these is the present Herrera, whom Higuera called before the Sacred Congregation Consistorial, with the intention of having him recognized as his Auxiliary, and to pay him the annual sum

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appropriate to him, calculated from the exact years from March 19, 1881, for which the sum was not paid, requesting the amount of 15 livres for each year, and another for reasons not yet satisfied, amounting to 187,500 livres.

[*Latin ed. p. 324*]

324. The matter concerning the position of the Auxiliary Bishop, which had previously been brought before the Holy Congregation responsible for extraordinary ecclesiastical affairs, was in the year 1894 communicated to the Archbishop of Santa Fe, conveying the intention of the Supreme Pontiff, namely that the Auxiliary Bishop Higuera had already been satisfied, having received the dignity of Dean, and that, being assisted by this office, the Archbishop of Santa Fe no longer required the services of an Auxiliary. However, Bishop Higuera strongly protested, claiming that his rights had been disregarded, and that a grave injustice had been committed against him, and therefore he appealed to the Most Holy Father, imploring that his rights be defended by judgment. And the Supreme Pontiff, moved by his remarkable benevolence and concern for justice, deigned to grant this request. The advocate, after noting that the question appeared to be already settled by the oracle of the Supreme Pontiff, who, having conferred the dignity of Dean, declared that no further right belonged to Bishop Higuera in the Auxiliary position, nor in the revenues thereof, presented the following arguments to dispel any doubt: 1. That Bishop Higuera was not appointed as an Auxiliary to the Archbishopric, as he himself contended, but was elected as a coadjutor to the Most Reverend and Right Reverend Archbishop Arbealez, and that, even if he were to be considered as such, 2. That even if Bishop Higuera were elected as an Auxiliary to the Archbishopric of Santa Fe, nevertheless, he was only assigned to that office for the province of Casanare; 3. And so, that when the new diocese of Tunja was established, and the province of Casanare was assigned to it, neither the Apostolic See, nor all the Archbishops who succeeded him in the Metropolitan See of Santa Fe, nor the chapter, nor the entire diocese, recognized Dean Higuera as an Auxiliary; indeed, what is more, that he himself did not act as an Auxiliary from the time of the establishment of the new diocese. First of all, the advocate notes that the office of Auxiliary Bishop is a form of coadjutorship, but that the coadjutorship of the Archbishopric, which the opponent desired, is, in law, entirely a *DEFENSIO ARCHIEPISCOPI*.

[*Latin ed. p. 325*]

St. FIDEI NEOGRANATEN. 525. For two species of coadjutorship are recognized by law; one is temporary, the other is perpetual. A temporary coadjutor is removable at the will of the appointing authority, and falls from office by the death of the coadjutor or for other reasons. A perpetual coadjutor is only that one who, with the right of succession, is chosen by the Roman Pontiff; Ferraris, in the word "Coadjutorship," and all the

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learned doctors of canon law. Indeed, the Patron argues, that no one grants a perpetual coadjutorship with the right of succession to the Archbishop of Arbealez, nor has he ever arrogated it to himself. Therefore, the Orator concludes, that the coadjutorship of the Archbishop is something new, irregular, and exceeding the limits of our law, and is not to be admitted, unless, after invincible arguments, it is proven that the case is otherwise. For that which exceeds the limits of the law, which is odious, which limits the jurisdiction of Bishops, must be rejected. Reg. iur. 15-28, in VI. Because, from the words of the Decree of the Consistory concerning the erection of the suffragan see, it is argued by the opponent that he is a perpetual Auxiliary; the Advocate is mistaken, deducing this from the cited Decree. The Roman Pontiff Gregory XVI, he says, established two things, namely: 1. that in the diocese of St. Fidei, there should be a titular Bishop present perpetually, who, even when the see is vacant, could exercise, at his pleasure, the functions proper to the episcopal order; 2. that such a titular Bishop should exercise the office of coadjutor, which he himself had instituted in the province of Casanare. Therefore, according to the decree of Gregory XVI, there must be a titular Bishop present perpetually in the diocese of St. Fidei; but not a perpetual coadjutor, argues the Orator, who further points out that, even if it is admitted that a perpetual coadjutorship was established, it must be proven by the opponent that it was granted perpetually; because, in the matter at hand, a distinction must be made between subjective and objective perpetuity; and, in the matter, the coadjutorship seems to have been granted to the person of the Archbishop, not to the See. Indeed, according to the Patron, even the perpetuity of the office of coadjutor cannot be absolutely deduced from the aforementioned decree, because the suffragan see is "here and now, meanwhile," "considering the present time."

[*Latin ed. p. 326*]

326 The Vicariate Apostolic of Neogranada is established under certain conditions. Therefore, the Supreme Pontiff Gregory XVI indicates the time at which the aforementioned Vicariate office ought to cease; namely, when such a condition arises that cathedrals can be erected there. But furthermore, the Defender argues that, during the time of the deputation of the Most Reverend Higuera, the decree of Gregory XVI lost its legal force, because 1°. for approximately 40 years, it had fallen into disuse. Only one Auxiliary Coadjutor was retained in Casanare for three years; but thereafter, until the year 1876, when the Most Reverend Higuera was elected Coadjutor, no coadjutor office was actually exercised in the diocese of Saint Faith; 2°. because the Most Reverend Pope Pius IX, in the Bull by which the coadjutor is designated, does not mention, either directly or indirectly, the decree of Gregory XVI; and Higuera is assigned his emoluments not by force of the decree of Gregory XVI, but by force of some consistorial

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decree; 3°. because in the Provincial Council held in the year 1868, it was considered whether it would be more expedient to divide the diocese of Saint Faith, or to establish a coadjutor bishop; however, this part of the Council had not yet been approved in the year 1873, and perhaps it was never approved. Furthermore, the Advocate points out that the rights of the opposing party should only be derived from the Bull by which the Most Reverend Pope Pius IX elected the Most Reverend Higuera as a titular Metropolitan Bishop, and as coadjutor to the Archbishop of Arbez, a Bull which the advocate will oppose; thus is the argument. For it is clear in law that the Most Reverend Pope, by a subsequent constitution, can interpret or abrogate an earlier constitution; therefore, it is certain that the Dean can claim those rights which were granted only in the Bull of the Most Reverend Pope Pius IX, and that recourse should be had to the ancient decree of Gregory XVI only in those matters which are obscure. But the Roman Pontiff, Pius IX, with clearer words, elected the Most Reverend Higuera as a titular Metropolitan Bishop, "so that also our brother Vincent, the Archbishop of Saint Faith of Bogota, may not be able to assist in the performance of pontifical duties and other pastoral functions, especially in assisting with the missions of Casanare."

[*Latin ed. p. 327*]

Of the NEW GRANADA Faith. 327. Subsequently, the Advocate proceeds, stating that it is not unknown to the Most Reverend Higuera, Archbishop of Tunja, that he requested from the Holy Father a personal auxiliary; therefore, it is not surprising if a personal auxiliary, or temporary one, was elected and appointed, namely, that both the Chapter of the cathedral church of the New Granada Faith, and all the clergy, and all the Bishops who succeeded Archbishop of Tunja, have always considered him as the personal auxiliary of the Archbishop of Tunja. Indeed, the Advocate states, Higuera affirms that he has been an auxiliary to four Archbishops, namely, Tunja, Paul, Velasco, and the present Archbishop Herrera; but it is clear that, since the diocese of Tunja was established, neither the Archbishop of Tunja, nor Paul, nor Velasco, nor the present Archbishop Herrera, have been his auxiliary. Turning to the second part of the argument, the Advocate seeks to demonstrate that, even if Higuera were elected as an Auxiliary Bishop, which is not conceded, this office would only extend to the province of Casanare. For, in the aforementioned Consistorial decree, issued by Gregory XVI, it is stated: "After mature deliberation, the aforementioned Holiness decreed that a suffragan see be erected in the province of Casanare, for a Bishop titular in the missions among the infidels, who resides in said province of Casanare, and who, both in that province, and in other provinces, at the discretion of the Archbishop of the New Granada Faith, shall exercise pontifical and other functions requiring the Episcopal order, etc." Therefore, the Advocate distinguishes between

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the principal and the accessory. The principal is that the suffragan see, or auxiliary bishopric, was established in the province of Casanare: "He decreed that a suffragan see be erected in the province of Casanare." The accessory is that this suffragan, or auxiliary, is also bound by the obligation to assist the Archbishop of the New Granada Faith in matters requiring the Episcopal order. Therefore, the Advocate argues, if it is admitted, as Higuera contends, that the decree of Gregory XVI was in force at that time, and that he was elected as an auxiliary by virtue of that decree, then the Reverend Higuera would be an auxiliary, or suffragan.

[*Latin ed. p. 328*]

328 The Most Reverend Archbishop of Saint Fe has declared that a certain individual was chosen for the province and for the province of Casanare, and that "a suffragan see is to be established within the province of Casanare." However, with the erection of the new diocese of Tunja, to which the province of Casanare was assigned, the suffragan see was abolished; and with the principal matter ceasing, the accessory also perished; so that after that erection, just as all rights in the province of Casanare were lost by Higuera, so too he was exempted from all obligation to assist the Archbishop of Saint Fe with regard to the power of the episcopal order. Furthermore, according to the Advocate, the Bull of Pope Pius IX confirms the Gregorian decree, because it is stated therein that Higuera was chosen as a coadjutor to the Archbishop of Arbealez, especially for the missions of the province of Casanare. Therefore, since the individual chosen as coadjutor did not immediately present himself to the province of Casanare, the Apostolic See warned the Archbishop of Arbealez that he must urge the Reverend Higuera to relinquish his office, unless he immediately presented himself to the province of Casanare. Finally, thirdly, the Advocate contends that it is true that Higuera was chosen as a personal assistant to the Archbishop of Arbealez, and that it is true, in any case, that Higuera was chosen as an assistant exclusively for the province of Casanare, so that, with the erection of the new diocese of Tunja, and with that province assigned to it, neither the Apostolic See, nor all the Archbishops who subsequently succeeded in the Metropolitan See of Saint Fe, nor the Chapter, nor the entire diocese recognized Higuera as a coadjutor; indeed, he himself did not act as a coadjutor from the erection of the new diocese. In truth, the Patron states that Cardinal Jacobini, Secretary of State, wrote to the Archbishop of Arbealez, saying that the Apostolic See would take care of Bishop Higuera of Maximopolitan, already an assistant, according to the recommendation of Arbealez himself. Furthermore, the Advocate says that, with the erection of the new diocese of Tunja, the Supreme Pontiff Leo XIII chose Higuera as an assistant to the Bishop of Medellin; which office Higuera refused. Already, in the decree of the Holy

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Father, no mention is made of an assistant.

[*Latin ed. p. 329*]

The Diocese of Saint Faith. 529. The diocese of Saint Faith; indeed, it is evident that the Roman Pontiff chose him for a position of assistance in another diocese, so that, "desiring to embrace him with particular benevolence," he might grant him revenues which the diocese of Saint Faith had lost due to the lack of a coadjutor. But, expressly, according to the witness, Pope Leo XIII declared that Dom Higuera had already been an Auxiliary of Saint Faith after the erection of the diocese of Tunja. For in the Bulls of collation of the Deanery, it is decreed: "We, having received from our venerable brother, the Archbishop of Saint Faith of Bogota, that you have already been an Auxiliary, etc." However, when Rev. Dom Higuera states that he saw in the Apostolic Registry a "minute" in which the Roman Pontiff wrote: "We, having received from our venerable brother, the Archbishop of Saint Faith of Bogota, that you are an Auxiliary, etc.," the Advocate in the Apostolic Registry notes that only two documents are found. The first is the original document of the Bull of the Deanery, which is preserved in the archives of the Registry: in this, it is read: "you have already been an Auxiliary." The second is the original form of the petition, by which Moses Higuera requested the Deanery from the Roman Pontiff, together with the Roman Pontiff's response, and the original signature. He petitions thus: "Most Holy Father, - Since the Deanery of the metropolitan church of Saint Faith of Bogota, which holds a dignity second only to that of the Pontiff, has become vacant by the death of the late Raphael Plata, its last possessor, who died outside the Roman Curia, or by some other certain means, and is presently vacant, therefore, your humble and devoted creature, Moses Higuera, titular Bishop of Maximopolitan, and already Auxiliary Archbishop of Saint Faith of Bogota, humbly begs that, favoring him with greater grace, you grant him the aforementioned Deanery, etc." Furthermore, "You have already been an Auxiliary" is read in the aforementioned "minute" which is preserved by the Apostolic Secretariat. To this, the Advocate adds that the Pope, in the Bull of the Deanery, only designates Rev. Higuera as the titular Bishop of Maximopolitan, and that there is no pontifical document in which he is designated as Auxiliary of Saint Faith after the erection of the diocese of Tunja.

[*Latin ed. p. 330*]

330. The Defender of the Faith observes that it is superfluous to inquire into the mind of the Roman Pontiff, when a clear response from the Roman Pontiff Leo XIII is present among the documents, to whom the question had already been proposed through the organ of the Congregation for Extraordinary Ecclesiastical Affairs, and who, after considering various documents, provided this response through Cardinal Marianum Rampolla,

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namely: 1°. That the Reverend Higuera had been elected as coadjutor to the Archbishop of Arbealez (not an archbishopric). 2°. That, with the erection of the Tunja diocese, no further auxiliary need arose. The Defender insists that this need appears much less today, both because in 1894, on August 30th, a third diocese was erected in Tolima, and because the revenues of the archiepiscopal see of the Defender of the Faith are so meager that, if a coadjutor were to be burdened with them, they would collapse. Therefore, the Advocate continues, the Roman Pontiff declared for this reason that the Reverend Higuera had already been "auxiliary to the Archbishop of the Defender of the Faith in Bogotá," and that he was granted the dignity of dean of the cathedral of the Defender of the Faith, and therefore, nothing is owed to him, neither in the past nor in the future, under the pretext of auxiliary service. The Opponent objects that the response of the Roman Pontiff is being misrepresented, as if he had not known about false documents, or not all the documents. The Defender reminds him that he has defended the rights of the Archbishop based precisely on those documents that the Opponent presented to the Roman Pontiff, and which were also delivered to this Sacred Congregation by the Congregation for Extraordinary Ecclesiastical Affairs. Then, the Advocate recalls that the Apostolic Delegate, upon the erection of the new Tunja diocese, appointed Bishop Higuera as the Apostolic Vicar in the new diocese, and that the Archbishop of Arbealez then recommended him to the Apostolic See, so that he might be chosen as the Bishop of Pasto. Because, as he says, the Reverend Higuera was elected to the newly erected Tunja diocese, he lost his office. For this reason, the Archbishop of Arbealez, in order to consult with Bishop Higuera in the meantime, chose him as the administrator of the new Tunja diocese, until the new Bishop, the Reverend Garcia, took possession of his diocese.

[*Latin ed. p. 331*]

The Defender argues that the Neogranadine Church did not recognize Higuera's possession of the benefice. To ensure that he would not lack for sustenance, a provision was established for him from the episcopal table of Tunja. Furthermore, since Higuera resided in this diocese after the establishment of the Tunja diocese and derived greater benefits there, both as rector of the Tunja seminary and as apostolic vicar of St. Augustine, the Archbishop of Arbeláez, in letters of congratulation, congratulated Mr. Higuera on having been elected as the vicar of St. Augustine, "in place of the designation of an auxiliary," and expressed his gratitude for his services during the time of coadjutorship. The Defender maintains that this was the opinion of his successors as well, because, according to him, none of them ever recognized Higuera as an auxiliary. The Archbishop Paul, both to the chapter and to the Very Reverend Herrera, now Archbishop, has stated on more than one occasion that he did not recognize Higuera as an auxiliary. Moreover, due to the necessity of visiting the regions of

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the archdiocese that lie in the province of Tolima, Archbishop Paul, by a broad decree, delegated Higuera as a titular metropolitan bishop, and assigned him a suitable pension from the archdiocesan funds. However, the Orator insists, Archbishop Velasco did not recognize Higuera as a coadjutor, so much so that Archbishop Velasco presented a certain petition to the Roman Pontiff, because Higuera had dared to register himself as an auxiliary of St. Fidei. Furthermore, he points out that not only the current Archbishop of St. Fidei did not consider him as an Auxiliary, but neither did the chapter of the cathedral church, after the new Tunja diocese was established, recognize Higuera as an auxiliary. For, already in the year 1882, when questioned by the Archbishop, the chapter replied that nothing was owed to Bishop Higuera, because he had already lost his coadjutorate with the establishment of the new Tunja diocese. Moreover, the canon Plata, in a meeting with the chapter, proposed that Bishop Higuera be paid what was due to him up to the day he lost his coadjutorate, that is, up to the day the new Tunja diocese was established. Finally, among the records, there is a report which, after this question arose, Archbishop Herrera requested from the chapter, in order to know their opinion. And all...

[*Latin ed. p. 332*]

332 The Reverend Chapter of the Basilica of the Holy Faith unanimously judged that, with the establishment of the Tunja diocese, Mr. Higuera had lost the office of coadjutor. Therefore, the Advocate finally attempts to demonstrate that neither did Mr. Higuera, after the establishment of the Tunja diocese, acknowledge himself as an auxiliary or coadjutor to that diocese, since he undertook and fulfilled duties in that diocese and elsewhere, duties incompatible with that of an auxiliary, and he received a suitable remuneration for them; indeed, in the Bull by which the Tunja diocese was established, among the persons enumerated for the new Tunja diocese, the name of Rmo. Higuera is found, and he has not testified to the contrary. Then, the Advocate reports that, at the time when the Tunja diocese was established, that is, on March 19, 1881, not all the emoluments which were due to Mr. Higuera as an auxiliary had been paid; that in 1883 he requested the Archbishop of the Holy Faith to pay him what was owed, and added: "I am owed the salary from the month of March until April 25, the date on which I assumed the government of the Tunja diocese, as can be seen from the decree of that date..." Therefore, the Advocate continues, Mr. Higuera resided in the new Tunja diocese until the year 1884, when he was promoted by the Roman Pontiff Leo XIII to the dignity of canon of the cathedral chapter of the Basilica of the Holy Faith in Bogota. Finally, the Advocate states that it must not be overlooked that Mr. Higuera, as canon of the Holy Faith, is well known to have affirmed that he still exercises the office of auxiliary, and that he goes to the Tunja diocese each year, at the beginning of December; and that he does not return until after the Easter

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season. Therefore, the Advocate suspects that Mr. Higuera instituted this cause against the Archbishop, not in order to be recognized as an auxiliary; but in order to obtain subsidies, either from the Archbishop Herrera or in some other way, while preaching poverty and destitution. However, it is reported that Mr. Higuera receives 14,000 pesos annually from his patrimonial revenues, while the Archbishop of the Holy Faith's table is constituted of approximately 30,000 pesos; and that he is, indeed, richly rewarded.

[*Latin ed. p. 333*]

OF THE HOLY SEE OF NEOGRANADA. 333. DEFENSE OF THE BISHOP OF HIGUERA. But the Bishop of Higuera, having believed that his rights had been disregarded because the Sacred Congregation, in considering the extraordinary affairs of the Church, had not had before its eyes the facts as they truly were, noted certain things in the aforementioned decrees which, I believe, he expressed in his own words. After first citing the Consistorial Decree of the year 1833, he then noted: "Secondly, By the force of this Consistorial Decree of the Sacred Congregation, four titular and auxiliary bishops were granted to the aforementioned Archbishopric, namely: Joseph Anthony Chaves, of the Order of Minor Friars, Vincent Arbelaez, likewise, and the aforementioned Bishop, Maximopolitan, Indaletius Barreto, and Francis of Paula Reyes. "Thirdly, By the force of the same Consistorial Decree, I myself, the titular Bishop of Maximopolitan, was also elected as the sole and exclusive auxiliary to the Archbishopric or Archdiocese of the Holy See of Bogota by the Most Holy Pope Pius IX, in the year 1876, as my episcopal institution clearly expresses in its Bull, which Bull is clearly founded in the Consistorial Decree, with these very words: 'And We hereby appoint you as Bishop and Pastor to that Church [Maximopolitan], fully entrusting to you the care, governance, and administration of this Church, both in spiritual and temporal matters, so that you may be able to assist the Venerable Brother Vincent Arbelaez, the Archbishop of the Holy See of Bogota, in the performance of his pontifical duties and other pastoral functions in the City and Archdiocese of the Holy See of Bogota, especially for the carrying out of missions in Casanares or elsewhere, as the Archbishop himself may judge best in the Lord; but so that, with the consent and license of the aforementioned Archbishop, you may perform pontifical duties and undertake other episcopal functions only in that City and Archdiocese, according to the Decree of the Sacred Congregation, which We have approved, and by the present authority We hereby establish and appoint, and also the customary.'"

[*Latin ed. p. 334*]

334 The Most Reverend Auxiliary Bishop of Bogota, by the authority and tenor of the aforementioned decree of Pope Pius IX, and in accordance with

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the customary episcopal grant of fifteen thousand francs of that currency, upon the entire tithe of the same Archdiocese, as agreed upon unanimously at the last Provincial Council held by the Bishops of Colombia, which grant had already been assigned to the aforementioned Auxiliary, is hereby assigned to me, in the manner of one who gives thanks and bestows rewards. "These words of the Bull clearly indicate that the Most Reverend Auxiliary Bishop of Bogota, by the authority and tenor of the aforementioned decree of the Roman Pontiff Pius IX, has been unconditionally assigned to me, as Bishop and Auxiliary of the Archdiocese of Bogota, in the manner of one who gives thanks and bestows rewards."

"Fourthly. As Auxiliary Bishop, I have assisted the four Archbishops of the City and Archdiocese of Bogota since the year 1876, both during vacancies and when the See was filled; namely: to the Most Reverend Vincent Arbelaez, to Joseph Telesphore Paul, S.L., to Ignatius Leon Velasco, S.I., and to the present Archbishop of Bogota, Bernard Herrera Restrepo, fulfilling the episcopal ministry with the utmost approval of those prelates; and nevertheless, the customary episcopal grant due to me has been withheld by the Most Holy Pope Pius IX since March 19, 1881, notwithstanding any objections, and even the Apostolic Letters are to be considered as null and void; namely: "By the aforementioned Apostolic authority, by the tenor of the present document, we constitute and appoint, and furthermore, we assign to you, in the manner of one who gives thanks and bestows rewards, the customary episcopal grant of fifteen thousand francs of that currency, upon the entire tithe of the same Archdiocese, in accordance with the agreement unanimously reached at the last Provincial Council held by the Bishops of Colombia, which grant had already been assigned to the aforementioned Auxiliary by authority and tenor of the foregoing."

"Fifthly. Having set forth my rights, the Most Reverend and Venerable Bernard Herrera Restrepo, the present Archbishop of Bogota, without consulting..."

[*Latin ed. p. 335*]

SECTION OF THE HOLY SEE CONCERNING NEW GRANADA. 355

The aforementioned See, relying solely on its own authority, declared that I am neither an Auxiliary Bishop of the Archbishopric, nor an Auxiliary of the Archbishop of BogotÃ¡, and it withdrew from me the pontifical faculties and all other episcopal functions to be exercised in the City and Archdiocese of BogotÃ¡, notwithstanding my twofold Episcopal dignity and that of Dean of the Metropolitan Church. Afterwards, it sent letters, which I have not yet seen, to His Most Eminent Cardinal Marianum Rampolla del Tindaro, Secretary of State; and His Most Eminent Lord, in good faith and without doubt, gave a response, based on what he believed to be the correct understanding of the rights and facts written thus far, against my rights, acquired by the power of Apostolic Letters since the year 1876, and

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peacefully possessed until now, and finally, in an audience granted to me, on the 10th of July of this year, thanks be to God, by himself, Most Holy Lord, may God preserve him, confirmed by his own words. "Since it is a matter of great importance for the Sacred Congregation of the Consistory that its Decree, in which the privilege of the Archdiocese of the Holy See of BogotÃ¡ always having an Auxiliary or Suffragan Bishop – perpetually – is founded, exists, and since, at this very moment, the same reasons for which such a Decree was given exist, the Most Illustrious Archbishop Herrera, without consulting the Holy See, declared, of his own accord, by his own authority alone, that it too had become null and void. " Sixth. It may be said that the Archdiocese of the Holy See of BogotÃ¡ does not have such a large mass [of resources] that it is sufficient to provide a suitable Auxiliary Bishop for BogotÃ¡, as has already been assigned by the Fathers of the Provincial Council and by Our Most Holy Father Pope Pius IX to me. But to this objection, it is replied that the aforementioned mass [of resources] had an accumulation of two hundred eighty thousand scudi, according to the Bull, which begins with the words *Coelestem Agricolam*, issued by Our Lord Gregory XVI, in the year 1835, on the 7th of the Kalends of October. Namely, 286,000 scudi. "From this amount, an accumulation of thirty thousand scudi..."

[*Latin ed. p. 336*]

336 s « The tithes of Neogranada were taken from the Diocese of Nueva Pamplona when it was established in the year 1835. Namely, 30,000 scudi. « Also, in the Bull of erection of the Diocese of Tunja, it was stipulated that, as I am already constituted Auxiliary Archbishop of the Metropolitan Archdiocese of Santa Fe de Bogotá, a sum of fifty thousand scudi was to be taken from it in the year 1880, on the very day of July 29. Namely, 50,000 scudi. « Therefore, it is seen that the current total of the tithes of the Archdiocese of Santa Fe de Bogotá amounts to two hundred six thousand scudi. Scudi 206,009. « Consequently, if a suitable annual episcopal sum is deducted from this total of tithes of the Archdiocese of Santa Fe de Bogotá, which has already been assigned to the aforementioned Auxiliary See by the Fathers of the Provincial Council of Colombia, and which has been graciously assigned to me by the Most Holy Pope Pius IX, a very large total of tithes of the Archdiocese will still remain. These are the words of the Bull of the Most Holy Pope Gregory XVI, which begins with the words *Coelestem Agricolam*. « Having taken a sum from the money collected as tithes, which is received annually from all the Provinces of the Archdiocese of Santa Fe de Bogotá, and which has served for the endowment of that Metropolitan Church, in order that it may properly perform its own duties, there remains a sum of eighty-six thousand scudi; and therefore, if from this sum are deducted the revenues from tithes which the Province of Pamplona contributes, namely, approximately twenty-five thousand to

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thirty thousand scudi, and these are assigned to the new Church, then a suitable endowment will be provided, according to the manner established by the ancient laws and legitimate customs, for the benefit of those who have a right to a share of it; with this deduction made, it is understood that there will still remain sufficient revenues for the Metropolitan Church to maintain its honor and dignity, and to perform its pastoral duties, as is fitting; and this all the more, since the revenues of this kind appear to be increasing day by day, through the progress of agriculture and other arts from which tithes are customarily collected. »

[*Latin ed. p. 337*]

SECTION OF THE FAITHFUL OF NEW GRANADA. 337 "Seventhly. The Most Reverend Archbishop Herrera and the Chapter of BogotÃ¡ object that the Auxiliary Archiepiscopal See of the Archdiocese of BogotÃ¡, called *Bulla* of the Holy Faith of BogotÃ¡, was vacant. But this cannot be the case, for three reasons. "Firstly. Because in the aforementioned *Bulla* of the Decanate, no clause is found from which it can be deduced that such an Auxiliary See was vacant; whereas, in my own Bull of institution as Bishop, these very words are found, by which the parish called *De Succursu*, which at that time I myself possessed, is declared vacant by the Supreme Pontiff Pius IX; namely: "We wish that the parish commonly called *De Succursu*, which, as we have learned, is located in the Archdiocese of the Holy Faith of BogotÃ¡, be declared vacant by the very fact of this provision and appointment." For it is certain that: the Legislator or the Law expresses what it wishes; and what it does not express, it is to be considered as not willed. "Secondly. Because, assuredly, Your Beatitude, in granting me the Decanate, intended only to favor me with a greater grace; but in no way to abolish either my greater rights, or the privileges of the Diocese of BogotÃ¡, which were granted by the decree of the Sacred Consistorial Congregation. For these are the very words of the *Bulla* of the Decanate: "Leo, Bishop, Servant of the Servants of God, to the Venerable Brother Moses Higuera, titular Bishop of the Metropolitan See, greetings and the Apostolic Benediction. Following you with paternal benevolence, because your merits demand it, and because your devotion is pleasing to Us and to the Apostolic See, We grant you, favorably, those things which We deem opportune for your benefit. We, who, as We have learned, you have already been Auxiliary Archbishop of the Holy Faith of BogotÃ¡, desiring to favor you with a greater grace, We confer upon you the aforementioned Decanate, and We also provide for it." "Therefore, Your will, Father, is clearly evident in this *Bulla* of the Decanate, as is apparent to anyone who reads it. "Thirdly. Because the mind of Your Beatitude, thank God, is also evident in the *Syngrapha* (commonly called the *Minuta*) of the *Bulla*

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of the Decanate, as well as in the Acts, Volume XXIX, page 342, line 22."

[*Latin ed. p. 338*]

338 S- OF THE FAITH OF BOGOTÁ. I have seen the Apostolic document, which, as I said, is very clear and evident. These are the words that were in the written agreement (commonly called the "minutes"), which I saw: "We, who, as we have learned, Venerable Brother, you have already been Auxiliary of the Archbishopric of the Faith of Bogotá... desiring to grant you a greater grace, We confer upon you the aforementioned Deanery... and We provide for it." "But. Is the dignity of Dean greater than the Episcopal dignity of the Auxiliary of the Archbishopric of the Faith of Bogotá, and of the Archbishop of Bogotá for the time being, as established by the decree of the Sacred Consistorial Congregation, and graciously granted to me by the Supreme Pontifex Pius IX in My Bull of institution, which is founded on such a Consistorial decree? " Is it a greater grace to receive each month only four hundred francs (400 f.) in that infamous money – commonly called "paper money" – which is the current assignment of the Deanery of Bogotá, than to receive each month one thousand two hundred and fifty francs (1250 f.) of that same money, as clearly stated in My Bull of institution? This, indeed, is the assignment or allowance that was previously attributed to the Auxiliary of the Faith of Bogotá, which is part of the Province Council, and which was assigned to me by the Supreme Pontifex Pius IX in that document which gives thanks and bestows rewards. "Indeed. How could Your Beatitude, O Most Holy and August Father!, have desired to grant a greater grace to Me, while I was peacefully holding the position of Auxiliary of the Archbishopric or Archdiocese, and while the most illustrious Archbishop Vincent Arbelaez was still alive, by granting Me the Deanery, thereby depriving Me of My rightful and greater Episcopal rights?.... It seems to Me that this is not possible." "Furthermore. Can the Apostolic Letters, in which My rights are founded – namely: the decree of the Sacred Consistorial Congregation – be declared valid without an explicit declaration from the Holy See?..."

[*Latin ed. p. 339*]

SECTION OF THE HOLY SEE CONCERNING NEW GRANADA. 359. Does my episcopal institution, founded upon the very Consistorial Decree, and its own Bull, threaten to be destroyed or misinterpreted, leading to the ruin of the Archbishopric, the Archdiocese, and its Auxiliary? And for what reason? "For, throughout all the years of my episcopal ministry – having always obeyed, as Archbishop of Bogota and Auxiliary, as stated above, the orders of the Sacred Congregation and Consistorial Decree, and the Bull of my institution – fulfilling my ministry 'according to the will of the Archbishop for the time being of Bogota,' am I now, in the end, to be considered a mere impostor?" These are harsh words! "And if my rights, which are

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most clearly founded in Apostolic Letters, are not to hold, what rights will prevail?"... "Furthermore, the same reasons for which the Archbishopric of Bogota was granted a privilege by virtue of the Decree of the Sacred Congregation still exist today. The Archbishopric of Bogota, of the Holy See, currently has one hundred and seventy-nine parishes (179 parishes). There is also a great length and difficulty of travel. It is necessary, in order to make a pastoral visitation, to travel by horse, and even on foot in some parts." "I wish to inform Your Beatitude that the territory of the Archbishopric of Bogota currently extends to twenty-five thousand, four hundred and ten square kilometers (25,410 sq. km.), and more; and it contains at least one hundred thousand inhabitants (1,000,000 inhabitants); and in addition, there are at least sixteen thousand non-believers who dwell in the territory of Saint Martin of Tours, seated in the shadow of death!"... "All the arguments made against my rights are found to be exposed and refuted in the documents that I possess; and I have other documents that are very useful to me in expressing the truth concerning these matters that are being discussed." "However, I will not miss the opportunity to offer as many thanks as possible to the Holy Apostolic See, for..."

[*Latin ed. p. 340*]

340 The Most Reverend Archbishop of Cattolica, with great kindness towards me, a priest unworthy of such favor, not through my own merits, but through the grace of God and the customary dignity granted by the Holy Apostolic See, first, Pope Pius IX, of blessed memory, deigned to raise me to the sublime Episcopal dignity of Metropolitan Auxiliary, in the year 1876, for the purpose of serving as an Auxiliary Bishop to the Archdiocese of Bogota, and by virtue of the decree of privilege granted to that Archdiocese by the Most Holy Pope Gregory XVI in the year 1833, and by the force of my own Bull of institution; and "desiring to grant me still greater favor," you yourself, Most Holy Father Leo XIII, through a singular gift of God, reigning Pope, were also pleased to bestow upon me the dignity of Dean of the Cathedral Church of the same Archdiocese of Bogota, in the year 1883. "Considering all these reasons, and having explained my rightful claim, I humbly beseech your protection, Most Eminent Hierarch of the Holy Catholic Church, and Custodian of all that is just and lawful: 1. That I may be granted a suitable episcopal stipend for all these years – from March 19, 1881, to the present – without any further withholding, despite my repeated and reasonable requests, and my poverty, which is known to all. 2. That in the future, a suitable episcopal stipend may be granted to me each month, as Auxiliary Bishop of the Archdiocese of Bogota, which has been unanimously "assigned" to the Auxiliary See by the Fathers of the Provincial Council of Colombia, and which was kindly assigned to me by the Supreme Pontiff Pius IX, as evidenced by the Apostolic Letters which I have presented; so that "I may be able to maintain the splendor of my

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dignity," as the Consistorial Decree most wisely states." With these considerations in mind, the question to be examined is: Did the Metropolitan Auxiliary Bishop lose his office upon the death of Archbishop Arbealez?

[*Latin ed. p. 341*]

S. FIDEI NEOGRAN ATEN. 341 RESOLUTION. The Sacred Congregation, after deliberation on May 2, 1896, decided to respond: Affirmative; and it is to be commended to the Most Reverend Metropolitan Archbishop. FROM WHICH THE FOLLOWING ARE GATHERED: I. The coadjutorship, suffraganate, or assistance given to the Bishop by the Apostolic See, ceases by the death of the coadjutor, whenever this office has been established in a temporary manner. II. A perpetual coadjutorship, with future succession, does not expire by the death of the coadjutor; but rather, it passes into full right: provided that the coadjutor, having the right to the office with perpetual coadjutorship while he lived, after his death, acquires the full right to the office. III. The auxiliary or coadjutorship in the diocese is to be considered a temporary coadjutorship, or for the life of the coadjutor, and expires by his death, without any right of succession, nor does it revive, unless by a new appointment from the Apostolic See, with the favor of another Bishop. IV. A perpetual coadjutorship or auxiliary for episcopal sees is to be considered as not existing in law, and as exceeding its limits; because whatever limits the jurisdiction of the Pastor is abhorrent; so that he who alleges it must prove it. BARCELONA. DISPENSATION OF MARRIAGE. July 25, 1896. Session 24, chapter 5, Concerning the reform of marriage. COMPENDIUM OF THE FACTS. On February 6, 1886, Frederick, 25 years of age, entered into a valid marriage in Madrid, at the Church of St. Martin, with Dolorosa, who was 28 years of age. On the same day, the spouses set out to go to Barcelona, where the husband resided, and immediately established conjugal life, although, as it appears, they did nothing during the first days.

[*Latin ed. p. 342*]

542 BARCINONEN. An attempt to consummate the marriage, due to the husband's repeated excuses. Later, especially urged on by the bride's mother, the spouses attempted to engage in marital relations. But, as is said, with a completely unhappy outcome: for the husband's virility was so weak that he never managed to complete the act of union with his wife during the entire six months that they lived together. For this reason, discord arose between the spouses, and especially between the husband and the wife's mother, who almost always resided with her only daughter, Dolorosa, and the disagreements grew daily, leading to a permanent separation of the marriage. The woman, leaving her husband, in order to provide for her own honest living and that of her mother, obtained, despite the husband's objections, permission to enter into a contract to practice the art of acting.

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Meanwhile, on December 22, 1886, she petitioned the Curia of Barcinonen for a separation from the marriage bed and cohabitation; but she revoked this petition the following year, reserving, however, the right to request the annulment of the marriage due to the husband's impotence. At that time, Frederick offered prayers to the Most Holy [Father], that he might grant a dispensation for his marriage with Dolorosa, as it was considered valid but not consummated. The Sacred Congregation, to which these prayers were sent by letter on June 13, 1887, by the Bishop of Barcinonen, replied, "that, after hearing the wife, he should report on the circumstances before, during, and after the celebration of the marriage, and on the legitimate reasons for the dispensation." Because Dolorosa was at that time residing in the city of Havana, the Bishop could not immediately carry out this task, but only did so by letter on September 3, 1889. The Sacred Congregation, having received these reports, instructed the same Bishop to prepare the proceedings, which, with a Tribunal established, began the investigation through a delegated judge. The spouses were summoned, who, although they agree on the non-consummation of the marriage, disagree on the causes; for the husband attributes the non-consummation to the wife's excessive reserve, while proclaiming himself to be very capable of the act, and he attempts to demonstrate this assertion through several medical examinations.

[*Latin ed. p. 343*]

BARCELONA. 543 cases, which were examined either during the period of cohabitation or after its termination. The woman, Dolorosa, laments and confesses that the sole cause of her unhappy state is the weakness and coldness of her husband. Subsequently, the testimony of seven witnesses was taken, who unanimously declared that the marriage was not consummated, although even this testimony is divided in assigning the cause of the non-consummation. To this testimony, relating to the non-consummation, the assertion of eight other witnesses is added, of whom some clearly testify to the impotence of Frederick. Finally, there was an examination of the woman's physical condition, which was carried out after a bath and in the presence of a matron, by three midwives experienced in such matters, two of whom were experts. These, separately, examined Dolorosa's body, reporting that they found all the signs of virginity, and therefore that her marriage was not consummated; and the midwives' reports were strongly confirmed under oath by the aforementioned physicians. Furthermore, in this lengthy process, there are testimonies from ten physicians, brought by Frederick or by the judge, who, with the exception of two, whose written reports were received after the publication of the proceedings, do not seem to favor the virility of the man. The Synoptic Discussion: The Consultor Theologus considered it appropriate, given the special circumstances of the case, to describe the substantial content of the testimonies; and having related these, he proceeded. Therefore, we have testimonies from the spouses

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excluding consummation, to which sixteen witnesses give their agreement. But these alone would already be sufficient to prove the existence of non-consummation. For, according to the words of the spouses, confirmed by oath, and with the addition of the testimony of seven witnesses, it must be affirmed that the texts of the sacred canons are certain. And indeed, in chapter Laudabilem, concerning frigidity and malice, it is simply stated: "If, however, both declare, without ever having known each other, with the testimony of seven witnesses, of relatives or neighbors of good reputation (if relatives are lacking), that..."

[*Latin ed. p. 344*]

344. BARCINONEN. (r. 1) After both parties have been questioned concerning the Holy Gospels, let each swear an oath that they have never been united in carnal copulation, and then it appears that the woman is capable of entering into a second marriage. Nor can it be objected that what is read in chapter [omitted] concerning him who, by reason of his marriage, is his wife's, namely: "They ought not to be separated merely on account of their confession, or the rumor of neighbors; for sometimes some people wish to conspire against marriage itself." For in the same place it is added: "But the rumor of neighbors is not to be considered so strong that, unless reasonable and trustworthy proofs are added, a valid marriage can be rightly annulled." And with the addition of testimonies, the confession of the spouses alone, nor merely the rumor of neighbors, is not sufficient, but there are proper proofs and knowledge, acquired at a time when there is no suspicion, either by the spouses themselves, or by their parents, or otherwise. Also, the circumstance of the actor in both spouses, and the production of witnesses from the family by the aforementioned actors, contrary to the prescriptions of the chapter concerning witnesses, cannot be objected. For there, Alexander III did not consider three witnesses from his family to be sufficient, and declared: "You will not suffer anything to be said by your wife on the basis of their testimony, but immediately added: "nor will you hear any of them, unless they have been proven to be of good life and opinion, concerning whom it is likely that they should swear for something." Indeed, Clement III, in chapter [omitted], which concerns those who can accuse a marriage, decreed: "That parents, brothers, and relatives of both sexes, are admitted in the testimony of their marriage, whether to join or to dismiss, as is approved by ancient custom, as well as by laws... That what is read, that the father is not received in the cause of the son, nor the son in the cause of the father, is true in criminal causes and contracts." Furthermore, granted that the proofs presented thus far were, by themselves, insufficient, all doubts are removed by the physical examination of the woman's body. If, by law, the proof of consummation is not invalidated when the man excludes it under oath, contrary to the

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testimony...

[*Latin ed. p. 345*]

BARCELONA. Three hundred and forty-five women, having affirmed under oath and confirmed by the testimony of matrons, it must be admitted, with even greater certainty in the present case, the existence of the lack of consummation, not only by the woman and the matrons, but also by the husband himself. Therefore, the conclusion stated in the chapter on proof is valid in this case, and with even greater force, where Gregory VIII said: "The woman states that she was not known by the man, nor could she have been known; which she proved both by her own proper oath, and by the testimony of seven women, who affirmed, by the appearance of her body, that she was a virgin, while the man, by his oath, asserted the contrary; it seems to us, therefore, that the faith of the girl's oath and the testimony of those seven women should be given more weight." The truthfulness and credibility of the midwives and doctors consulted regarding the examination of the woman are confirmed by the Defender of the Sacred Bond himself, who says: "It is established that these praised persons are known to be of competent and irreproachable integrity, by trustworthy testimonies." Nor can a late objection or the cohabitation of the spouses for six months be opposed, by virtue of which they claim that the late objector should not be heard, according to the prescribed chapter *De frigiditate et maleficiis*. In that chapter, it is written: "But if she has proclaimed to the Bishop, or through his representative, for a year, or half a year, that she did not know her, and you affirm the contrary, you must be believed, because you are the husband of the woman: for if she wished to proclaim it, why did she remain silent for so long? She could have learned it quickly, and in a short time, if she could have cohabited with you." For in the same chapter, a late objection is admitted when the husband himself confesses the lack of consummation, in agreement with the testimony of the woman, as in our case. It is said: "You received a woman, and you had her for some time, for a month, or three months, or a year; and now, for the first time, you say that you are of a frigid nature, so that you could not cohabit with her, nor with anyone else; if she, who should be your wife, affirms the same thing that you say, and it can be proven that it is so, you can be separated." Indeed, even if the husband denies the lack of consummation, the woman making a late objection should be heard, whenever she can prove it by certain signs, or by...

[*Latin ed. p. 346*]

346. In Barcelona, the question of the husband's virility, or at least the integrity of his own body, is raised. Hence, the Doctors commonly teach, as Sánchez states in 1. 7, disp. 109, n. 6: "When a husband denies conjugal relations, the conclusion is that he should be denied an audience,

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unless the wife, by her appearance, demonstrates that she does not know the husband, as if she were a virgin observed by matrons; for then it is more likely that the wife is denying the act, than that the husband is affirming it." Furthermore, from the mutual accusations of the spouses, one accusing the other of impotence, or alleging the other as the cause of the lack of consummation, a very serious argument for the lack of consummation is presented, without any suspicion arising from either party. Of the seven witnesses, six had received knowledge of the alleged impotence of the bride from the groom, and at least four, while maintaining their good faith, should be considered to have an interest in clearing the groom of the suspicion of impotence, since they are the groom's parents and godparents. Moreover, one of the witnesses who received the suspicion of impotence from the doctor Corominas, proves nothing, since this doctor, in his depositions, has not presented anything against the wife's virility, and indeed, has not confirmed the husband's virility with positive arguments, unless I am mistaken. Therefore, if the arguments against the wife's virility, presented in this place, are not substantiated, those arguments that are presented against the husband's virility seem to be of great importance. Indeed, several witnesses, questioned about certain allegations or indications that confirm the existence of impotence, even before the marriage, namely, rumors or fame spread among the husband's acquaintances, that the husband was unfit for marriage, responded, as witnesses from hearsay, confirming such indications. All of these things, when compared with the declarations of experts who have examined the husband's body, gain greater weight and necessarily arouse a strong suspicion of the husband's impotence. Indeed, some of the experts present negative findings, that is, they present nothing against the husband's virility, but they do not present arguments in favor of virility either; therefore, they seem to be more unfavorable to the husband than favorable. Others either explicitly admit the suspicion of impotence, or indirectly confirm it.

[*Latin ed. p. 347*]

BARCINONEN. 347 Therefore, despite the declarations of the most recent experts, namely Davalos and Subirà, all the circumstances and the entirety of the case clearly suggest that the man's power, at least relatively, was highly doubtful. Indeed, if I am not mistaken, all those circumstances, both legal and factual, are present in this case, which canonically confirm the presumption of impotence. All these things seem to make the existence of consummation much clearer, and to remove all reasonable doubt. Granted, and barely conceded, that the signs of the man's impotence are merely doubtful and only indicate a mere presumption of lack of consummation, the law regarding the three-year trial could be invoked to obstruct the resolution of the case, especially since it is established that the woman is alleging this impotence. However, it does not seem contrary to the in-

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tention of the law to require such a trial when the case proceeds through the path of justice or a declaration of nullity, but not, at least so strictly, when it concerns a gracious dispensation. Indeed, even if a three-year cohabitation were strictly necessary in the gracious path, yet when such circumstances exist that there is no hope of consummation, when the woman suffers a very serious harm from attempts at consummation and her health is gravely endangered, when the spouses remain separated without any probability of reconciliation, and when knowledge of the unfortunate condition of the marriage has become widespread, all of which are present in the present case, then, if I am not mistaken, the three-year trial cannot only be considered unnecessary, but rather it should be considered dangerous and should be avoided. Furthermore, whatever the Doctors may say speculatively, in the present case, in which the proceedings are entirely through the gracious path, the circumstances of the spouses are very special, and the circumstances suggest impotence; therefore, with the benevolent discretion of the Supreme Pontiff, the three-year trial can be omitted without violating the law, without a properly called extraordinary dispensation of the law. Finally, today in practice, the three-year trial is rarely insisted upon in the gracious path.

[*Latin ed. p. 348*]

348 BARCELONA. Gracious; indeed, the causes generally arising from the head of impotence, having abandoned the province of justice, are resolved in a gracious manner, namely, through a dispensation for caution from a valid but unconsummated marriage. Therefore, a more benign method of proceeding can certainly be invoked in the case proposed, in which the causes and reasons that seemed to necessitate such a law are not verified. Sufficient causes exist for granting a dispensation; but the principal cause is noted, and admitted by the betrothed themselves and by the witnesses, as the impossibility of consummating the marriage, which, with careful consideration, can be said to be a true, at least relative, impotence. Furthermore, the cause derived from impotence is generally considered among the most serious, and it itself, even if presented alone, is judged to be sufficient. Schmalzgrueber, *Ius Eccles.*, p. 4, tit. 19, *de Divor.*, § 1, expressly admits this cause, saying: "For, in this specific case, the following are considered sufficient... a supervening impotence after a valid marriage; because the purpose of marriage ceases." Many Doctors agree with this, following Sánchez, 1. 2, disp. 16, almost in these very terms, in this matter. Nor can the lack of certainty regarding the impotence be objected; for in these matters, the fact equivalent to impotence must suffice, namely, the lack of consummation of the marriage, despite the desires and repeated efforts of both spouses. OPINION OF A CANONIST. The Consultor sought to demonstrate that the marriage had not been consummated; and he exclaims: "Oh, that all the causes of marriage

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discussed in this Holy Congregation might possess the same clarity, and be supported by the same proofs as ours!" There exists a sworn confession, repeatedly made and entirely consistent, of the two spouses. There exists the deposition of fourteen witnesses, confirmed by oath. There exists the declaration of five other witnesses. There is also the sworn testimony of a midwife, an honest woman, a physician, and a surgeon. Nor is the opinion or judgment of the Most Reverend Bishop of Barcelona lacking. In short, as many arguments and proofs as can be desired are present, and as expressly stated in the Constitution *Dei Miseratione Be-*.

[*Latin ed. p. 349*]

BARCELONA. 349. The fourteenth canon and the instruction of this Holy Congregation, as the Glossa points out, require many, and even more, to be present in our case. What, therefore, will prevent us from embracing the proposition, with moral certainty, that the marriage between these spouses was not consummated? Furthermore, the Consultor states that this marriage could not have been consummated, due to the impotence of the man; and although he might have attempted consummation a hundred times, he would never have been able to achieve the effect of consummation. The impotence of the man is demonstrated by: 1. The rumors, or rather, the fame of Frederick's impotence; 2. The supporting evidence upon which such a rumor or fame is based and strengthened; 3. The testimonies of Frederick's father and bride regarding his impotence; 4. The judicial testimonies of the doctors whom Frederick consulted; 5. The confessions of Frederick himself, made either outside or within the judgment; 6. The declarations of experts, namely, three doctors and two surgeons, approved in court, after having examined Frederick's body. The Consultor states that impotence can in no way be attributed to a woman, and the proofs of this thesis appear so clear, so evident, and so demonstrative at first glance, that we believe it permissible for us to pass them over for the moment. However, we judge that three things should be noted: 1. Three midwives, after examining the body of the bride, unanimously agreed on this definitive judgment: "The narrowness of the vaginal opening," they themselves say, "is the same as that of other virgins, and is not an obstacle to the consummation of marriage." 2. The depositions of the witnesses, who were brought in by Frederick in his favor, do not conclude anything against the power of the bride, since they all rely solely on the testimony of Frederick himself. 3. Furthermore, the argument derived from the second of the documents signed by Doctor Joseph Corominas has no validity, either because in that document the true impotence of the bride...

[*Latin ed. p. 350*]

350 BARCELONA. It is not asserted, indeed, it rather seems to be excluded, also because from the beginning, no process was presented, which

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certainly seems to indicate a distrust from the bride concerning such an instrument, nor was it recognized and confirmed by its author, although he himself was summoned to judgment by a twofold citation, as it appears from the process. Now, since these two arguments are the only and exclusive foundations of the accusation of impotence made by the man against his bride, it becomes evident that he falls from his accusation and action. From what has been said, therefore, it appears that a dispensation could be requested concerning a valid and unconsummated marriage: for the following concur in the case: 1. the greatest probability, rather a moral certainty, of the man's impotence, as it appears from the above exposition; 2. the safety, and perhaps even the very life, of the wife's body, as also is evident from the process; 3. the salvation of the souls of both spouses, and especially of the bride, who would be constantly and proximately exposed to the danger of sinning on account of the insatiable lust and intemperance of the husband; 4. and finally, the peace of the spouses, the tranquility of their families, and the removal of public scandal, all of which would be harmed by the continuation of the marital union.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE *ex officio*. Frederick, of Barcelona, by profession an architect, when he was in his twenty-fifth year, on February 6, 1886, in the parish church of Saint Martin in Madrid, before the words of present, made a vow to Dolorosa, who is an actress, who had already been born twenty-six or twenty-eight years ago, and thus was of age. After the marriage was celebrated, the man took his wife to his home: where the spouses lived together for about six months; after which, Dolorosa, urged by her mother, abandoned the marital home, declaring the work imperfect, and turning the man into a useless piece of wood. This matter has been thoroughly investigated by the most learned theologians and canonists. But the affair was being carried on by...

[*Latin ed. p. 351*]

BARCELONA. 351. It is to be understood that Frederick himself shall sustain the plaintiff's arguments in the trial. For the truth of the matter is, if Frederick were incapable of undertaking this task, he would certainly not pursue the lawsuit, since he could not hope for any other marriage; moreover, he would expose his misfortune to the public in the solemnity of the trial. Furthermore, it must be noted that, in controversies of this kind, the testimony, namely, the examination by midwives of the body of Dolorosa, is not absolutely conclusive in every instance. For Dolorosa remained in the bath of warm water for a space of three quarters of an hour before her body was examined by the midwives. This is of great importance, so that we may be protected from deceptions, by which women feign virginity at will. With these considerations in mind, the question was raised: Should consultation be sought with the Most Holy Congregation regarding a dispensation from a marriage that is valid but not consummated in this case?

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RESOLUTION. The Sacred Congregation, after deliberation on July 25, 1896, decided to respond: Affirmative, forbidding the man from entering into another marriage, without the consent of the Holy Congregation.

MONTIS ALTI BURDEN. On August 22, 1896. Through a summary of petitions. The priest, Constantine Colletta, of the place commonly called Patrignone, in the Diocese of Montis Alti, had obtained the benefit of the lay patronage right in the Church of Saint Mary of Vyminatu, which was established on September 23, 1895, after a legitimate presentation by the Municipality and by the inhabitants of the land; but he refused to take actual possession of it, for the following reasons. The same priest had already acquired another benefice in the same church since the year 1884, and in the granting of that benefice, the burdens of this one were not mentioned.

SUMMARY OF THE FACTS.

[*Latin ed. p. 352*]

552. The matter of Montis Alti had progressed to the point where it became clear that this benefice was intended to be a residential one, with the purpose of providing pastoral care and avoiding the usurpation of authority by the governing body. Indeed, the Beneficiary refused to undertake these obligations, and in these recent times, at the urging of the Bishop, who insisted on the faithful observance of residence and the exercise of pastoral ministry, he stubbornly resisted and, contrary to the Bishop's intention, appealed to the Sacred Congregation of the Council. He alleged that the Ordinary had imposed penalties upon him due to his opposition and the insistence of the Sacred Congregation. The Bishop, having learned of his appeal, duly notified it, and the Sacred Congregation of the Council issued a decree on May 29, 1896, stating: "Let this be noted in the records, and let it be notified to the Bishop, who shall instruct the parties that the matter is to be discussed in a plenary session of the Most Reverend Fathers." However, the Advocate deemed it wiser to concede defeat by withdrawing from the judicial process, and sent a message regarding the disputed benefice.

Meanwhile, it happened that another benefice became vacant in the same parish, the one about which we have spoken above, and which the Beneficiary refused to accept. This is the object of the present controversy. For the Bishop orders that the benefice be held as a residential one for the exercise of pastoral care, which the priest, Colletta, resists.

A Synopsis of the Defense of the Beneficiary:

The Advocate presents the following arguments. He states that the Episcopal Curia should exercise all due diligence through the Vicar General, who, although the parish priest is the pastor of the local church ("P'atrignone"), has chosen to reside in the Episcopal Curia, transferring

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the pastoral burden to the Beneficiary. Furthermore, there are three benefices of the same nature established in this parish, belonging to the jurisdiction of the lay patron. In truth, it does not follow from the nature of his benefice that he is obligated to reside; he cites the actions of Bishop Aronne, who, upon his death, offered another of these benefices to a successor in 1884, with an express agreement to simulate the obligation of residence in order to avoid the usurpation of authority.

[*Latin ed. p. 353*]

MONTIS ALTI 353. Then he presents the Bulls of Institution of that same benefice, granted by Pope Leo XII in the year 1825, in which the nature of the benefice is declared as follows: "We grant to the same Vincent, who holds other two or three perpetual, simple, and similar benefices, not requiring residence, ecclesiastical benefices, etc." This same declaration is contained in the act of possession granted by the senior Canon of the Cathedral Church of Monti Alti, concerning "the collation of a perpetual, simple, non-residential ecclesiastical benefice." Finally, in these last days, the Orator again visited the Sacred Congregation, reporting that the General Vicar had denied him permission to hear confessions outside the parochial church of Patrignone, and he requests that this interdiction be relaxed by the Sacred Congregation.

OBSERVATIONS OF THE BISHOPS. "The parish of Patrignone is constituted in such a way that, besides the parish priest, it has three prebends, among which is now the priest Constantinus Colletta, who has presented a suppliant petition to this Sacred Congregation, in order that his benefice may be declared exempt from the burden of both residence and of assisting the parish priest in the care of souls.

"Indeed, the nature of these three prebends cannot be ascertained from the founding documents, since these documents are perhaps lost, even before the erection of this diocese, namely, while the aforementioned parish was subject to the jurisdiction of the Bishop of Ascoli. Therefore, it can only be determined from the facts, by an unforgettable custom. Indeed, from this custom, the rights and obligations of both the parish priest and the prebendaries are distributed in the following manner: 'The parish priest offers the Mass for the people on those feast days which are held in two consecutive weeks; any one of the prebendaries, in one of the three subsequent days, according to the order of dignity; namely, the first prebendary immediately after the parish priest; the second after him; and the third, who is now the Orator himself, after all.'"

"2. The tithes and funeral taxes are divided as follows..." (The text is incomplete).

[*Latin ed. p. 354*]

354 # MONTIS ALTI. Hoc beneficium recipit tantum quam partem duplo

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maiorem quam quae singulis praebendariis adscribuntur. Quod si una ex praebendariis vacet, tunc, relate ad decimas, habetur ius accrescendi inter praesentes, et in partibus aequalibus.

3. Adsunt alia onera Missarum, quibus statis temporibus parochus cum praebendariis satisfacit sive per turnum, sive in eadem mensura.

4. Parochus primus esse debet in infirmis adsistendis; ei tapien in hoc munere succedunt ex ordine praebendarii, ita ut non raro contingat, ut qui ultimum occupat locum per longum tempus hoc onere non gravetur. Et hoc abunde eruitur ex libris parochialibus, qui testantur, singulos praebendarios infirmis sacramenta saepe ministravisse. Imo nonnunquam in iis relatum legitur, parochum eidem infirmo Viaticum detulisse; unum ex praebendariis extremam unctionem exhibuisse, et alium eius morti adstitisse. Ex iisdem vero libris apparet praebendarios ita se gessisse, non solum dum paroecia proprium parochum habebat, sed etiam quum ipsa regebatur ab oeconomo curato.

5. Parochus suppletur a praebendariis in administratione Sacramentorum cum ipse sit impeditus et omnes complent solemniores functiones ecclesiasticas. Hinc, ex. gr., absente parocho, praebendarii ministrant baptismum et cetera sacramenta, excepto matrimonio; assumunt stolam pro parocho in funeribus, processionibus etc.

6. Singulis diebus festis de praecepto, cum habeantur duae missae, quarum una primo mane, altera circa meridiem celebratur, singuli praebendarii per turnum debent celebrare primam si parochus alteram, et ultimam si parochus primam celebret.

Quibus positis, facili negotio, si quid opinor, dispicitur cuius naturae singulae praebendae sint censendae. Si enim onera et iura praedicta magna ex parte parochialia sunt, etiam singula beneficia parochialia et ideo minime simplicia censeri debent. Quod adeo verum est, ut etiam tribunal laicum, nonnullis retro annis, iudicaverit non posse unam...

[*Latin ed. p. 355*]

355. – It is necessary to suppress those [benefices] which were then available, because they bore the character of parochial institutions. – Furthermore, individual beneficed clergy are bound by the obligation of residence, although not in so strict a sense as the parish priest, because, in his absence, they cannot perform the aforementioned duties. – When the Orator appeals to facts and documents that seem to favor him, it cannot be denied that there is some impropriety in his interpretation of them. – He states, first of all, that he himself cannot hold benefices, and certainly not more than he possesses, even the smallest of them, as if they were to be considered as parochial, because they were sometimes granted to simple clerics, who were not subsequently ordained as priests. – This fact cannot be doubted, and in my judgment, it can only be excused by the fact that such grants were

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made at a time when there was a shortage of priests who could hold the benefices, and in the hope that those clerics would be ordained as priests at a later date. This is also evident from the fact that such clerics, after being appointed, were sometimes relieved of the benefice "because they were not able to fulfill the duties," as can be read in one of these bulls. Furthermore, from the documents existing in this chancery, it is clear that this occurred in the first half of this century; as for earlier times, the situation was quite different. And indeed, in the municipal statutes of Patrignoni, published and approved in the year 1558, the following is stated regarding the election of parish priests and beneficed clergy, which the municipality carried out as patron: "If the priorate is vacant, all beneficed clergy must be proposed and nominated first; then the other priests of that territory. If, however, any benefice is vacant, all priests of that territory must be proposed and nominated, and the one who has the most votes in its favor shall be elected to the priorate or to the vacant benefice; this, however, being expressly declared, that no one shall hold more than two benefices, and if this happens in any other way or by any other means, the election is invalid and shall have no effect, etc." From these passages, it is quite clear that only priests could hold benefices, as is also evident from the very passages themselves.

[*Latin ed. p. 356*]

356. The benefices of MONTIS ALTI should be considered as parochial, both because the right to grant them was assigned to the priorate, and also because the prior-parish priest, due to the inadequacy of his own benefice, could obtain another. This practice does not entirely contradict the customs of this curia; for, in the year 1751, when a certain Philippus Fortuna, a subdeacon, sought to obtain one of these benefices, his request was not granted until he appointed a priest who would represent him in assisting the parish priest in the care of souls, until he himself was raised to the priesthood. "Another argument the Orator draws from the Bull concerning the benefice of his predecessor, in which it is stated that a personal residence is not required – and from a certain instance presented in September 1825 to the Vicario Capitular of this Diocese, in order to demonstrate that the patronage of the benefice established in the parish church of that land (Patrignoni), of which he was provided by the Most Holy Pope Leo XII with an apostolic Bull sent to the Dataria, belongs to the community and inhabitants of the same place, by foundation or endowment, and that it is not attached to any Sacred Order, as is revealed by the latest records of the benefice itself, etc." "The Vicario Capitular replied as follows: - On September 6, 1825 - "The Most Reverend Vicario Capitular of Montis Alti... having considered the previous grants of a simple, perpetual, non-residential benefice called the 'praebenda' in the parish church of St. Mary in Vyminatus, in the land of Patrignoni, declared, decreed, and stated that the aforementioned benefice has been and is of the right of patronage of the Community and inhabitants

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of the same land of Patrignoni, and that it is not attached to any Sacred Order, which is fully evident from the records preserved in this Episcopal Chancery, as has been recognized by the Most Reverend etc." "I do not deny that such a document has some weight; but, if the matter is examined truthfully, all difficulty, as it seems to me, completely vanishes. One might first inquire whether a simple Vicario Capitular could have rendered his judgment in a matter of such importance, and how it could be that a benefice that is simple and does not require a sacred order..."

[*Latin ed. p. 357*]

The burden of celebrating Mass for the people can be attached to the rectory of Monti Alti, which is the duty of the true and proper parish priest (Council of Trent, Session 23, De Reformatione, chapter 1), and together with the parish priest, the right to collect funeral fees and tithes, which are especially paid for the administration of the Sacraments. But all these things, which nevertheless have their weight, are overshadowed by a document, which is said to be based on other agreements and documents. And first of all, from the words of the Patrignoni Statute concerning the benefices, it is clear that the Sacred Order requires benefices, since those who hold benefices must be priests. "2° The municipality of Patrignoni on November 23, 1748, presented a petition to the Sacred Congregation, so that the Bishop of Montalti at that time would recall three beneficed priests, who, with his permission, had left the parish, so that they would not further neglect the duties of their benefices, namely: 'Y obbligo di celebrare pro populo ed alternativamente la Messa - ogni mattina - sull'aurora; cantare la Messa e il Vespro nei giorni festivi ecc.'" All of which "entails personal residence, as is evident from the table." "3° When, in the year 1751 mentioned above, the Subdeacon Philippo Fortuna was appointed to one of the benefices, mention was also made of the obligation "to assist the parish priest in the care of souls" and "to personally, and not through a substitute, after being promoted to the priesthood, to serve the aforementioned church, to reside there, and to perform divine services with the others, the Prior and the beneficed priests, on designated days, under penalty of deprivation, according to the form of the Sacred Council of Trent and the example of the year 1602, as is stated in the records of the Chancery." "4° The fact mentioned here concerns a certain priest named Cintium Leonardus, who was deprived of his benefice "because of his non-residence and his continuous absence from the services of the same benefice for more than three years." "It is true, however, that it is not certain whether these two latter facts refer to a benefice held by a chaplain, or to some other benefice. But this is the subject of our discussion."

[*Latin ed. p. 358*]

358. MONTIS ALTI does not err; for since they present the same qualities

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and obligations, all should certainly be considered equal in their assessment, and therefore what is said of one should be understood to be said of the others. "5°. What more need be said? While the aforementioned Capitular Vicar asserted, based on the records of the Chancery, that the position held by the Orator was a "simple, non-residential benefice" in a papal bull of March 31, 1817, in which the same position was conferred upon a certain Tobias Lucidi, it is written, "requiring some residence," and in a bull of October 22 of the same year, in which it was again conferred upon the priest Seraphino Paris, it is declared, "residential, with honors and obligations." Therefore, it cannot be understood how, in the collation made to the successor of the same Seraphino, the position immediately lost its nature and became a non-residential benefice. "Hence, it seems that the declaration of the Capitular Vicar is contrary to the Council of Trent, because it detracts from the qualities of the benefice, Session 25, chapter 5, concerning reforms, and because it converts a parochial benefice into a simple one, chapter 16, in the same place. "The same is felt by the parish priest of Patrignoni, who always insisted that both the Orator and his predecessor fulfill the duties of the benefice, even though they themselves found this burdensome." In letters sent to the Sacred Congregation on July 25, 1895, the Bishop is asked about the priest Colletta, as if he were presumptuously defending his intentions against the Ordinary. As is evident, the question is not of law, but of fact. It is asked whether certain obligations are inherent in the benefice. Furthermore, it is expressly stated that the law "is that ecclesiastical benefices should be conferred without diminution," meaning that they should be conferred neither with diminished revenues, nor with increased obligations. Therefore, as Fagnanus states in *Significatum*, n. 3 and following, *De praebendis*, the Sacred Congregation has often declared that new obligations cannot be imposed on benefices already established by ordinary authority. Moreover, it is the established principle of law that obligations in benefices, especially those of smaller revenues, cannot be presumed, but must be invincibly proven.

[*Latin ed. p. 359*]

MONTIS ALTI 359. Furthermore, in the absence of founding charters, the imposition of obligations is derived and presumed from custom. Having considered these matters, the question was raised as to whether the obligation is sufficiently proven in this case. RESOLUTION. After deliberation by the Sacred Congregation on August 22, 1896, it was decided to respond: that, from what has been presented, the benefice is residential and coadjutor to the parish, and in accordance with the mind of [the Church]. FROM THE INSTRUCTION OF THE SACRED CONGREGATION OF BISHOPS AND REGULARS concerning Secular and Regular Clergy who frequent Universities for the purpose of studies. It has been observed that the Roman Pontiffs, in every age and in every place, have devoted their thoughts and

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care to the proper instruction of those who have been called by the Lord. For they have either established schools, seminaries, and even universities, or have favored their development, in which both secular and regular students are imbued with both the humanities and all sacred and profane sciences, and can be honored with academic degrees of every kind. But in such a way that they are instructed in true and genuine knowledge, joined with faith and piety; since the doctrine and discipline, the moderation and vigilance of faith and morals, are exercised by the Apostolic See and by the Bishops. However, in these days, due to changed circumstances in Italia, some who are attached to the clergy, whether secular or regular, are considered to be pursuing certain courses of study at universities of civil government; from which the wise and salutary power of the Church and of the pastors is entirely excluded. Given these circumstances, it is clear to all what differences and damages may arise for the ecclesiastical youth. Therefore, it is necessary to proceed with caution, so that the limits of established necessity are not exceeded and that imminent dangers are diligently avoided. Therefore, the Sacred Congregation of Bishops and Regulars, entrusted with these matters, has decided to impart this instruction to the Bishops and Superiors of Orders and Congregations in Italia, in accordance with the will of the Most Holy Lord Pope Leo XIII.

[*Latin ed. p. 360*]

360 FROM THE SUPREME SACRED CONGREGATION AND RULES, I. To the extent that students are admitted to Universities who have demonstrated their suitability outside of government lyceums, Bishops and Superiors of Orders and religious Congregations shall not send their subjects to said lyceums, but rather to ecclesiastical institutions, to schools, to colleges, of which the best and truly Catholic method of instruction has been thoroughly examined. If, however, due to the lack of such institutions, schools, or colleges, or for other serious reasons, it is absolutely necessary to send some to government lyceums, then in such cases, those regulations concerning access to Universities, which are set forth below, must be strictly observed. II. No one from the secular clergy shall attend government Universities without the express permission of his Bishop; who, when granting such permission, shall consider only what the needs of the Diocese require, in order that suitable and qualified professors, equipped with diplomas, may be found in the institutions established or to be established for this purpose. III. Orders and Congregations which do not undertake the task of teaching shall not send their students to government Universities. However, novices from Orders and Congregations that are dedicated to teaching are never sent to these Universities; and those who have made a profession are not admitted to them unless they have obtained the express permission of their Superior General, who grants it only to those who are needed and are sufficient for their colleges and schools. IV. Students of both the clergy

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shall only attend courses of study in these Universities that are necessary for obtaining a degree or academic qualifications. V. It is of the utmost importance to make careful selections of those to be sent to Universities. No permission shall be granted to students until they have commendably completed the entire course, both in philosophy and in theology, as prescribed by the diocesan statutes for the secular clergy, or by the Constitutions of the Order or Congregation for religious. VI. When selecting those to be sent, attention should be paid to understanding, intelligence, and discernment, to diligence in studies, to the nature of the mind, to how well they are educated, to their strength, and to their steadfastness in good intentions. But above all, the utmost consideration must be given to the honesty of their character and the integrity of their morals. It is necessary that the young men chosen should make the greatest effort to cultivate the gift of Faith and the vocation with which the Lord has called them; that they should ardently love the Catholic Church; that they should demonstrate, in thought, word, and deed, veneration and obedience towards the Holy Apostolic See; that they should be imbued with the teachings of our most holy Religion and engaged in pious exercises.

[*Latin ed. p. 361*]

From the Sacred Congregation of Propaganda Fide and the Regulations, 561: Let those be chosen who, by the integrity of their morals and the true praise of their ecclesiastical life, may excel. Let these, in fine, be selected who have a well-founded hope that, by their manner of acting, they will add honor to the ecclesiastical group through excellence in studies, and who will vindicate their virtues through their praise.

VII. To better safeguard against dangers, let Bishops take care that their ecclesiastical students, while attending the University, reside in the Seminary; if this is not possible, in some religious house, or at least with some approved secular priest; unless, indeed, they have parents in whose house they can reside. Also, diligent priests, or pious laymen of good reputation, would seem worthy of praise and favor if they were to establish, where possible, some hostel for ecclesiastical students; in which these students would find, at a modest expense, a safe dwelling, suitable for quiet study and the practice of a pious life.

VIII. If the University is located outside the Diocese, the Ordinary shall commend these students to the Bishop of the place, to whom the students shall be obligated to render obedience upon their arrival, and shall continue to do so as long as they remain there. The Ordinary and the Bishop of the place shall mutually agree that the students shall be entrusted to the care and vigilance of some priest, endowed with virtue, knowledge, and experience of youth, who will guide them and regularly inform the Ordinary of their conduct. Furthermore, let the Bishop require frequent letters from his students; and let him himself readily engage in this correspondence, so

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that he may instruct them with counsel and warnings, and encourage and strengthen them in their holy purpose.

IX. Superiors of Orders and Congregations should always prefer Universities located in places where they have a house of their Order or Congregation; and they should direct their students to reside there. If they do not have a house in any University town, they should certainly ensure that the students are received into another religious house, or into a diocesan seminary, or into some other ecclesiastical institution. If a convent or house of their own is lacking, they should never send only one of their subjects to attend the University, but two or more together, so that they may watch over each other, help each other, and encourage each other to fulfill the duties of their vocation. Let the Superior of the nearest house, or some other religious man endowed with virtue, knowledge, and prudence, frequently visit the students themselves; who shall then inquire into the manner of their lives, their studies, and—

[*Latin ed. p. 362*]

362. The Superiors General and Provincials shall diligently investigate the situation and report it; so that the Superior General, as the need arises, may provide suitable counsel. Furthermore, the Superior General shall ensure that the students write to him, and he shall frequently write to them, in order to foster their unity with the head of the Order or Congregation, and to preserve them through paternal instruction and admonitions in a spirit of obedience and observance. X. It is entrusted to the zeal and prudence of the Bishops and Superiors to choose that University among many, in which the students are exposed to fewer dangers, and in which the benefits of counsel and assistance are more readily available, for the sake of the tranquility, morals, and progress of the students. If, perchance, it should happen that a Professor sometimes gives lectures contrary to religion or to morals, then the Bishop and the Superior General shall take care that the students either transfer to another University, or that they do not attend such lectures; for the law provides indeed that attendance is required for the course of the University, but it does not demand attendance at all and every lecture. Moreover, except in this case, the students shall diligently attend the lectures, so that they may promote their own progress in knowledge, and may give an example of diligence to their fellow students, and may show obedience to the Professors. XI. As for books and summaries of lectures, in which some things may perhaps occur that are contrary to religion, or to morals, or to the truth of ecclesiastical history, or to the laws of the Catholic Church or of the Roman Pontiff, so that the use of such books or summaries may not be avoided, the Bishops and Superiors shall provide as necessary in such cases; and furthermore, they shall take care to provide their students with an antidote through the best books that can be obtained, and through the help of priests who are distinguished

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by doctrine, piety, and experience, who will assist the students in discerning the snares of sophistry, and in refuting the errors with which school books or summaries of lectures may be infected. Above all, they shall deter their students from reading newspapers or periodicals that are filled with false or dangerous doctrines, narratives, and scandals, and that gradually, without sense, disturb and pervert the right understanding and action. XII. The Bishops and Superiors of religious orders urge their subjects to show themselves to be dignified when dealing with Moderators and Professors in the Universities; and to be civil to their fellow students.

[*Latin ed. p. 363*]

From the Sacred Congregation of Propaganda Fide and the Regulations, 363: They are to treat all with courtesy, but not with excessive familiarity. They are to forbid, absolutely, the giving of names to circles or other associations of a political or contentious nature; nor are they ever to be present at gatherings of students, convened perhaps, whose purpose or aim is to complain about or otherwise protest against the Superiors or Professors.

XIII. Bishops holding Sees in university cities should diligently foster circles or associations of ecclesiastical students where they exist, and carefully establish them where they are lacking. They should employ for this purpose priests, whether secular or regular, whom they judge to be more suitable; of whom at least one shall perform the office of ecclesiastical assistant. It will be the duty of this assistant to convene the meetings of the students and to preside over them. In these meetings, ecclesiastical students, setting aside political disputes and partisan studies, should discuss, debate, or read about the humanities, historical disciplines, philosophical or theological topics. Nor should they omit to jointly offer certain prayers, and to establish other suitable acts of religion and piety to be performed on certain days, so that in these associations, commendable emulation, fraternal charity, and Christian piety may prevail. Secular students may also be admitted to these ecclesiastical circles, but cautiously, and with the approval of the ecclesiastical assistant; but only those who are well-disposed in mind and action, and who are devoted to religion, piety, and good morals.

XIV. Bishops and Superiors of religious orders should earnestly exhort their students to persevere firmly in the spirit of their sacred vocation. To this end, they should use all the most effective means, namely, prayer, frequent reception of the Sacraments, the practice of pious works, the avoidance of vanities, and the avoidance of the company of the frivolous and indolent. To religious students in particular, fidelity in the acts of observance which are consonant with their rule should be recommended, namely: daily mental prayer, examination of conscience, spiritual reading, silence, and retirement. During the annual vacations, religious students should return entirely to their Convent or to the religious house of their Institute; and there they should resume the acts of regular observance

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with the Community. All students, whether clerical, secular, or regular, should devote this time of vacation to holy spiritual exercises.

[*Latin ed. p. 364*]

564 FROM THE SACRED CONGREGATION FOR BISHOPS AND REGULAR CANONS, AND THE RULES. If, even with the precautions and diligences indicated up to this point, and with other measures suggested by pastoral and paternal concern, Bishops or superiors of religious orders should learn that one of their subjects is deviating from the straight path of truth or virtue, and is straying away from the University; it is better to interrupt his course of studies, rather than to allow him to suffer detriment to his soul. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation of Bishops and Regular Canons, on the 21st of July, 1896. I. CARD. VERGA, Prefect. A. TROMBETTA, L. * S., Pro-Secretary.

FROM THE SACRED CONGREGATION FOR RITES, BOIS-LE-DUC. Doubts concerning the Little Office of the B. Virgin. On the 24th of April, 1896. The Most Reverend William Van de Ven, Bishop of Bois-le-Duc, humbly requested a solution from the Sacred Congregation regarding the following doubts:

I. Can the Bishop, with ordinary authority, approve the translation into the vernacular language of the Little Office of the B. Virgin, which is read in the Roman Breviary?

II. Can the same Office, thus translated and approved, be published and used by the faithful residing within the boundaries of the diocese of Bois-le-Duc, and especially by religious congregations of both sexes?

And the Sacred Congregation, after careful consideration and with the unanimous vote of the Liturgical Commission, decided to respond as follows:

To I: Affirmative.

To II: Affirmative, but only for private recitation.

And thus it responded. On the 24th of April, 1896.

C. CARD. ALOISI-MASELLA, Prefect of the S. R. C.

L. * S. ALOISIUS TRIPEPI, Secretary of the S. R. C.

[*Latin ed. p. 365*]

365 FROM THE SACRED RITUAL ORDINANCES of the Order of Friars Minor Capuchin. Doubts regarding the commemoration of the Holy Family in the votive offices of the saints. November 13, 1896. A church, recently erected upon firm foundations, in honor of the Holy Family of Jesus, Mary, and Joseph, was duly blessed, and a hospice of the Brothers Minor Capuchin was attached to it. Certain doubts having arisen concerning the common commemorations or votive offices of the saints, the Reverend Father Francis M. of Bistagno, of the Order of Friars Minor Capuchin, and

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Superior of the aforementioned church and hospice, humbly requested a solution to these doubts from the Sacred Congregation of Rites, namely: I. Whether, in reciting the votive offices of the saints, the commemoration of the Holy Family, as the titular church, which has been blessed but not consecrated, should be included? II. And, if affirmative to the first question, are the commemorations of Saint Mary and Saint Joseph to be omitted? III. If negative to the second question, should the commemoration of the Holy Family precede these commemorations? And the aforementioned Sacred Congregation of Rites, after careful consideration and having heard the opinion of the Liturgical Commission, decided to respond as follows: To I and II: Affirmative. To III: As stated in the preceding. And thus it responded. November 13, 1896. By CARDINAL ALOISI-MASELLA, Prefect. L. D. PANICI, Secretary of the Sacred Congregation. TULLEN, or SAINT-DIÉ. Concerning the canonization of Blessed Peter Fourier of Mataincourt, Priest of Lorraine, General Prefect and Reformer of the Regular Canon Order of Saint Augustine, called "Our Savior," and also the founder of the community of nuns of the Congregation of Our Lady, and of its rule, according to the rule of Saint Augustine. REGARDING THE DOUBT: Concerning what miracles, after the veneration granted to the Blessed, are established in the case and for the purpose in question? The sanctity is so proper to the Church, that it is its note and its property. This, indeed, is permitted, above all, from the chapter which Christ...

[*Latin ed. p. 366*]

366 It is established by the Sacred Canons, and it must be repeated, that even in those who "belong to the Church," it is necessary that virtue shine forth. Hence, it has always happened that men of outstanding piety have appeared, who have exemplified all virtues and have labored diligently for the benefit of others. This, indeed, became clearly evident in the seventeenth century. While we may pass over the names of Francis de Sales and Vincent de Paul, it is well known that the Blessed Peter Fourier of Mataincouria, a priest of the Diocese of Toul, established a beautiful reputation for himself on the path of the saints. This man, from his youth, cultivated the most holy virtues, and excelled in the integrity of his life: nothing in him was lacking in accordance with the norms of Christian modesty, and nothing was even slightly deficient from the laws of honesty and rectitude. Admitted among the canons who take their name from St. Augustine, it is remarkable how eagerly and with what zeal he performed the duties of religious life. As prefect of the Mataincouria curia, it is scarcely possible to describe how diligently he watched over the flock entrusted to him, taking care above all that impious words against God and the heavens were not uttered, that festive days were not defiled by dances, banquets, and forgetfulness and contempt of divine things, and that vices did not spread widely, driven by the fear of punishment. He devoted all his efforts

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to ensuring that the people were instructed in the fundamentals of the faith, that the minds of young children were guided towards piety, that hatreds were especially quelled, and that all classes of citizens were renewed in the study of virtues and religion. Restorer of ancient discipline, and supreme master of the Congregation to which our Savior gave its name, he shared with the wise the institutions that were strictly observed for the sake of a more perfect life. He established colleges for young women, giving them rules, which he named after our Lady, and which provided all care and instruction for young girls, guiding their early years towards the proper observance of religious duties and towards those arts that are fitting for a well-ordered and virtuous life. No less did the charity of Blessed Peter extend to the entire people, for whose benefit he so diligently labored, so that the salvation of souls was his supreme law. Indeed, all these things are a testament to his outstanding virtue and remarkable sanctity, so that it may seem surprising that the decision to honor him among the celestial saints was made so late. However, if one considers that all things are governed by the will of God, and that the wicked times in which we live are before our eyes, it is easily understood that it is not only fitting, but most useful for our time that a religious man should be numbered among the celestial saints.

[*Latin ed. p. 367*]

From the Sacred Congregation of Rites, number 567, is to be added. This is clearly demonstrated by this illustrious example: that true goods and even blessedness itself are not to be sought in worldly desires, but in virtues; that this present life is not the end, but a *stadium*, or, as the Apostle says, that we do not have here a lasting city, but are seeking one to come; and that miracles, not merely possible but actually accomplished, are to be recounted, and that two such miracles have recently occurred, through the intercession of the Blessed Peter Fourier.

The first of these occurred in the month of October, in the year one thousand eight hundred and sixty-seven. Maria Alexandra, a Virgin of the Monial Sodalitas, under the protection of our Lady, in the monastery called Abbaye aux Bois, in the Archdiocese of *Parisiensis*, was carrying a bundle of linen when she fell and injured her right knee, suffering such pain that she seemed to be dying. A few days later, the pain subsided; but in the following year, in the month of April, it returned, and grew so severe that she was forced to lie down. To the pain was added a fever, weakness of the limbs, a failure of the senses, and nausea. The situation worsened daily: the remedies of physicians were useless, and there was no hope of recovery. The final hour seemed to be approaching, when the sick woman, along with her companions, approached the relics of the Blessed Peter and placed them near her ailing leg. The result was astonishing! Maria Alexandra immediately felt better, rose from her bed, and was completely healed.

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The second miracle occurred on the twenty-third day of June in the year one thousand eight hundred and eighty-one, in the monastery of *Argentinensi*. Maria Francisca, a member of the same Congregation, who had suffered from stomach ulcers for many years and had endured days and nights of torment, invoked the help of the Blessed Peter, and novendial prayers were offered to him for this purpose. On the last day, when there was still no hope of recovery, she was suddenly seized by sleep; when she awoke, she felt that she had been restored to health. She immediately got up, went to the chapel of the monastery, attended the service, partook of the heavenly banquet, and offered heartfelt thanks to her protector, for whom solemn festivities were being held on that very day.

Therefore, at the urgent request of the Postulators, the matter was reopened, and, with God's favor, the canonization of the Blessed Peter was brought to a successful conclusion. The cause was resumed, and the apostolic process, completed with accounts of the two asserted miracles, was examined, and their validity was recognized and proven. Then, as is customary, a preparatory meeting was held in the offices of Cardinal Caietani Aloisi-Masella. The Prefect and Relator of the Cause of the Sacred Congregation were present the day before.

[*Latin ed. p. 368*]

368 FROM THE SACRED CONGREGATION OF RITES, the ides of May in the year 1895, as in the preparatory proceedings for the Apostolic Palace at the Vatican, the action was initiated on the eleventh of May in the year 1896, and a thorough investigation was made. Finally, on the fifteenth of December of that same year, before the aforementioned Congregation of Sacred Rites, with the Most Holy Lord Pope Leo XIII present, and through the aforementioned Reverend Cardinal Caietan Aloisi-Masella, Prefect and Relator of the Cause, the following question was proposed: "Whether and concerning which miracles there exists, in the case under consideration, proof of their occurrence." The Most Holy Father, after hearing the opinions of the Consultors and Cardinals, pronounced a distinguished oration. However, no decree was made on that day, so that time might be devoted to prayer, in order to obtain divine assistance in this grave and difficult matter. But on this day, on which the three Wise Men adored God, the Divine Child, and of whose patience, humility, and devotion, the Blessed [Peter] spoke, Our Most Holy Lord, after most piously celebrating the sacred Mysteries in his private chapel, summoned to himself in this hall of the Vatican, the Reverend Cardinal Caietan Aloisi-Masella, Prefect of the Congregation of Sacred Rites and Relator of the Cause, together with the Reverend Father Gustavo Persiani, serving as Promoter of the Sacred Rites, and myself, the undersigned Secretary, and, in their presence, solemnly promulgated the decree: That two miracles are established; namely, the first: the instantaneous and perfect healing of Mother Mary Alexandra,

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a professed nun of the Congregation of Our Lady, in the monastery of Abbaye aux Bois, from a very severe arthritis in her right knee; and the second: the instantaneous and perfect healing of Sister Mary Franasene, a coadjutor in the monastery of Strasbourg of Our Lady, of the Order of Regular Canons of Saint Augustine, from a very severe ulcer in her stomach. This decree was ordered to be published and recorded in the acts of the Congregation of Sacred Rites on the eighth of January in the year 1897. C. L. CARD. ALOISI-MASELLA & R. C. Prefect. * S. DIOMEDES PANICI, S. R. C. Secretary.

[*Latin ed. p. 369*]

EX 369. Regarding the Rite of Geneva. A question concerning the compatibility of the Second Vespers of the Votive Office of the Blessed Virgin Mary Immaculate with the First Vespers of the following Sunday. The Most Reverend Joseph A. Broquet, Vicar General of the Diocese of Geneva, humbly requested a solution to the following doubt from the Sacred Congregation of Rites, namely: Whether, when the Second Vespers of the Votive Office of the Blessed Virgin Mary Immaculate coincide with the First Vespers of the following Sunday, the Vespers should be celebrated from the chapter of Sunday, or rather, should the Psalms of Saturday be recited? And the aforementioned Sacred Congregation, upon the earnest request of another from the Masters of the Ceremonies of the Apostolic See, and after deliberation, decided to respond as follows: Affirmative to the first part; negative to the second. And thus it responded. On September 3, 1895. C. CARD. ALOISI-MASELLA, S. R. C., Prefect. L. S. A. TRIPEPI, Secretary. ROMA. Regarding the Altar, commonly called the sepulcher. At the urgent request of numerous Most Reverend Bishops from various regions, who strive to observe the sacred rites and ceremonies in their dioceses according to ecclesiastical prescriptions and laudable customs, the question concerning the Altar, commonly called the sepulcher, having been raised, was again presented to the Sacred Congregation of Rites with the following twofold doubt: I. Whether, in the altar in which the Most Holy Sacrament of the Eucharist is publicly exposed and reserved on the Feria of the V and VI of the Greater Week, the burial of the Lord should be represented, or the institution of the same Most August Sacrament? II. Whether it is permissible to use statues or paintings to adorn the aforementioned altar, namely of the Blessed Virgin, St. John the Evangelist, St. Mary Magdalene, and soldiers of the guard, and others of this kind? The Sacred Congregation of Rites, in its ordinary meetings, held on the date indicated at the Vatican, considered the report of the aforementioned Cardinal, Prefect of the same Sacred Congregation, with the earnest votes of three Most Reverend Consultors, written down, as recorded in the Acts. Vol. XXIX. page CCCXLII.

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[*Latin ed. p. 370*]

370. After carefully considering ancient practices, the present discipline of the Church, and all matters pertaining to this subject, the Sacred Congregation decided to respond as follows: To the first question, affirmatively. To the second question, negatively. However, Bishops may, where ancient custom prevails, tolerate such practices; they must, however, take care that no new customs are introduced in this matter. And thus it decreed, revoking all decrees to the contrary. December 15, 1896. Subsequently, these matters were brought to the attention of His Holiness, Pope Leo XIII, by the undersigned Cardinal, and His Holiness approved and confirmed the decree of the Sacred Congregation on the same day, month, and year.

[Signed:] CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation.

L. & S. D. PANICI, Secretary of the Sacred Congregation.

BELVILLE. Doubts concerning the feast day, office, and Mass in the church dedicated to the Holy Infant Jesus. In the Diocese of Belleville, there exists a parish church dedicated to the Holy Infant Jesus, and the priest assigned to that church, with the consent of his Most Reverend Bishop, humbly requested the Sacred Congregation to resolve the following doubts:

I. When should the feast day of the church be celebrated?

II. What office and Mass should be said on this feast day?

III. Should a commemoration be made at the End of Lauds and Vespers among the common commemorations, and if so, how?

Furthermore, the Sacred Congregation, after considering the report of the Secretary, the careful opinion of the Liturgical Commission, and all matters pertaining to this subject, decided to respond as follows:

To the first question, on December 25th.

To the second question, the office and Mass of the Nativity of the Lord.

To the third question, regarding the first part, affirmatively. Regarding the second part, at Lauds, the antiphon "Gloria in excelsis Deo" should be sung, that is, the antiphon for "Benedictus" in the Office of the Nativity of the Lord. At Vespers, the antiphon for "Magnificat" should be sung at the Second Vespers of the same Nativity, omitting the word "Hodie." And thus it decreed on December 18, 1896.

[Signed:] C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation.

L. & S. D. PANICI, Secretary.

[*Latin ed. p. 371*]

371 FROM THE HOLY CONGREGATION FOR STUDIES OF THE OR-

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DER OF PREACHERS. Confirmation of the Constitutions for the Faculty of Canon Law. Since the Reverend General Master of the Order of Preachers presented the constitutions recently established for the Faculty of Canon Law in the Philosophical-Theological College of Saint Thomas Aquinas in the City, requesting that they be confirmed by pontifical authority; this Holy Congregation for Studies, making use of the powers granted to it by the Most Holy Pope Leo XIII, has judged that they should be approved and confirmed, as is approved and confirmed by this decree. Therefore, it is permitted for the aforementioned Faculty of Canon Law to make use of the aforementioned Constitutions, annexed to this Decree, a copy of which is preserved in the archives of the Holy Congregation, and also to enjoy the rights and privileges contained therein, provided that they are religiously observed. Contrary provisions notwithstanding. Given in Rome on the tenth day of the month of July, in the year one thousand eight hundred and ninety-six. C. MAZZELLA, Prefect. CARD. JOSEPH MAGNO, Secretary. STATUTES of the Pontifical Faculty of Canon Law in the College of Saint Thomas Aquinas in Rome, established under the governance of the Fathers of the Order of Preachers. CHAPTER I. Concerning the erection and members of the Faculty. I. By pontifical authority, a Faculty of Canon Law is erected and canonically established within the College of Saint Thomas Aquinas in Rome, under the governance of the Fathers of the Order of Preachers, with the privilege of conferring all academic degrees upon clerics, whether internal or external, who have duly attended its schools. II. The President of the Faculty is the General Master of the Order for the time being, to whose care the entire Faculty is entrusted; it is his right and duty to choose professors, to admit students, to convene meetings of the Faculty and to preside over them, to approve study programs and examinations, to preside over examinations and to cast votes.

[*Latin ed. p. 372*]

572. The diplomas of the Sacred Congregation authorize the conferral of all degrees and provide for everything pertaining to the honor and advancement of the Faculty, as well as for the customary instruction of students in canonical disciplines. III. The Regent of Studies shall supply the duties of the President in all matters, according to the order's constitutions, during the time he is present in the College of St. Thomas. He shall perform the office of Prefect of Studies in the Canon Law Faculty, as in the Philosophical and Theological Colleges, in all matters concerning the attendance of students and the diligence of professors, and shall especially diligently ensure that those things prescribed in the statutes concerning the order of studies are faithfully observed. IV. Besides the President and the Regent of Studies, the members of the Faculty are the Professors and Doctors selected by the General; with the right to cast votes regarding the knowledge of the students through examinations for degrees. V. The Faculty takes

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under its protection and patronage the memory of St. Thomas Aquinas, whom the Supreme Pontiff Leo XIII has appointed as the patron of all studies, as well as St. Raymond of Pennafort, whose outstanding merits in the science of Canon Law are well known, as well as the Order of the Preachers, and all those who, for centuries, have been renowned as masters of law. On the feast days of both patrons, all students and professors shall attend the solemnities held in the church of the Faculty; and the school shall be closed. CHAPTER II. Concerning the Professors and the reception of students. VI. It must be ensured that only those who are Doctors in Canon Law, or those of whom it can certainly be ascertained, according to the Order's Constitutions, that they have received the degrees of Master and Doctor, are called to the office of Professor, and are suitable for teaching the disciplines of Canon Law. The President shall choose these from the Fathers of his Order, or, if he pleases, from external Doctors. VII. For the institutions of ecclesiastical and civil law, and for the explanation of texts, three distinct Professors shall be named, to whom others may be added, also to be named by the President, who may supply their places if they are prevented by illness or some other impediment from giving lectures. VIII. When the clerics of the Faculty are celebrating the courses, having duly completed the three years of study and having successfully passed the examinations, they shall receive the degree of Do-

[*Latin ed. p. 373*]

FROM THE SACRED GENERAL CONGREGATION 373: Lecturers and Professors are obligated to renounce [their positions] by law; moreover, all Professors are to be encouraged to treat the subject matter with greater and deeper consideration, as far as possible, and to draw genuine doctrine from the sources, without neglecting the aid of authors of better reputation, whether ancient or modern, who have interpreted Canon Law solidly and profoundly.

IX. A register must be established by the Prefect of Studies, in which all students must be enrolled each year: their names and dioceses, as well as the course of studies that each one wishes to follow, must be noted therein.

X. No one shall be admitted to the courses of the Faculty who has not yet completed his studies of theology.

XI. Whoever has devoted himself to the studies of Canon Law in another University or in another Seminary, in which it is certain that these studies are properly taught, and has obtained the degree of Bachelor, may be admitted to the second course of the Faculty; but he will be required to undergo an examination on the entire subject matter of Canon Law, both public and private, in order to obtain the degree of Bachelor.

XII. No dispensation shall be granted regarding the obligation to attend the classes of the Faculty in the second and third years, in which the canonical texts are explained. However, whoever has already obtained the degree

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of Licentiate from another University may be admitted to the third course of the Faculty.

XIII. A record of attendance must be given to each student, in which the Professors shall note, every two months, the student's attendance, diligence, and progress. Careful account will be taken of these matters when students are admitted to the examinations.

XIV. After the month of November, no student shall be admitted, unless by a general dispensation, which can only be granted for proven reasons and with the recommendation of the proper Ordinary, by the Rectors of Studies and Professors.

CHAPTER III. Concerning the method of studies.

XV. The courses of the Faculty are completed in three years. In the first year, the subjects of ecclesiastical law, both public and private, are studied; and this course, if it shall be deemed necessary, may also be begun in the third year of theology. In the second and third years, the canonical texts are explained.

[*Latin ed. p. 374*]

374 FROM THE SACRED CONGREGATION OF STUDIES, Decree XVI. In the canonical texts, for a period of two years, two daily readings must be held, in the morning and in the evening, each of which should last at least one full hour. But the treatment of the subject matter must be more extensive and profound by the Professors, as the nature of the Faculty requires, and as the privilege of conferring degrees, and the excellence and dignity of the degrees themselves, demand.

XVII. It is highly desirable that a subsidiary and related chair of Canon Law be established within the Faculty, in which the Instructor, by virtue of his position, will expound the principal notions and selected questions of civil law, and make comparisons between this and Canon Law. If this chair is established, all students must attend its lectures for at least two years.

XVIII. Scholastic exercises, which are called circles, should be held several times privately during the week, and sometimes solemnly during the year, in which all students must participate, and in which, with the presence and guidance of one of the Professors, questions of greater importance are defended in Latin, and objections are answered using the scholastic method. Consideration will also be given to the students' attendance at these circles in relation to their admission to the examinations.

XIX. Each year, programs of lectures and questions, which the Professors are to expound in each course, must be printed. Such programs must be reviewed and approved by the Dean, after consultation with the Director of Studies and the Professors; and they must be publicly displayed along with the calendar and the distribution of hours for each class.

CHAPTER IV. Concerning Examinations and the Conferral of Degrees.

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XX. In addition to the ordinary Professors of the Faculty, other Doctors of Law, even from the secular clergy, if they so desire, will be selected by the General Prefect, to conduct examinations of the students who aspire to degrees, together with the Professors of the Faculty.

XXI. In addition to the programs of studies, theses or titles must also be printed, so that the students who aspire to degrees will clearly know the subject matter on which they will be tested.

XXII. For the degree of Bachelor, at least thirty theses must be presented, which must contain the principal topics of the Institutions.

[*Latin ed. p. 375*]

EX S. C. STUDIORUM 375. Candidatus debeat omnes has res exponere et defendere coram tribus Professoribus vel Doctoribus; examen debeat saltem dimidiam horam durare. XXIII. Ad gradum licentiae, etiam, sexaginta tituli materiae per annum traditae proponuntur, ex quibus argumenta examinis, ad libitum, accipient tres Professores vel Doctores: experimentum debeat saltem tres horarum quartas durare. XXIV. Ad gradum doctoratus obtinendum, candidatus debeat paratus esse omnes materias exponere et defendere quae primo, secundo et tertio anno traditae sunt. Examen, autem, pro laurea scriptum erit et orale. Ex centum thesi et titulis, tres sortiantur, ex quibus eliget quem maluerit candidatus ut dissertationem Latine conscribat sex horarum spatio, absque libro vel scripti subsidio, (corpus iuris et Conc. Trid. et Vatic. permittuntur), in loco expresse designato, uno Professore vel alio a Praeside deputando adstante. Dissertatio trium Doctorum iudicio subiicietur, quorum approbatio pluralitate suffragiorum necessaria est, ut candidatus ad orale experimentum admittatur. Orale experimentum fiet coram quatuor saltem Doctoribus, quibus integrum erit quamlibet ex centum thesi eligere, ita tamen ne singuli eamdem eligant. Ad horam integram saltem examen orale pro laurea protrahatur oportet. Qui pluralitatem votorum adeptus fuerit, approbatus censetur. XXV. Quibus experimentum male cesserit, facultas fit post sex menses ad examen redeundi, quod si tum etiam non probentur, spes alterius experimenti in posterius eis nulla sit. XXVI. De peritia eorum, qui lauream aliosque gradus postulant, non remisse cognoscant Examinatores, ne huiusmodi experimenta ad simplicem speciem reducantur. Et de his conscientia oneratur sive examinatorum, sive Regentis studiorum, sive Praesidis ipsius. XXVII. Nemini per saltum fas sit gradus adipisci, sed qui ad licentiam contendit iam baccalaureatu; qui ad lauream, licentiae gradu iam insignitus sit oportet. XXVIII. Examinum, superato periculo, diplomata pro singulis gradibus candidatis conferantur, quae, praeter Facultatis sigillum, Praesidis et Regentis studiorum subscriptione muniri debent. Omnes tamen candidati professionem fidei prius emittant necesse est a

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Pio IV et IX praescriptam. Diplomata pro bacca-

[*Latin ed. p. 376*]

376. Graduates of the Sacred Congregation of Studies receive diplomas, and permission may be granted to award degrees privately; however, public honors are conferred in the Aula Facultatis, with the customary solemnity.

XXIX. In the diplomas, explicit mention must be made of the Apostolic Privilege, by virtue of which, by delegation from the Holy See, three degrees of the Faculty are conferred.

CHAPTER V. Concerning the interpretation of the statutes.

XXX. No one shall be permitted to deviate from these statutes without the permission of the Sacred Congregation of Studies. However, preserving the substance of the matters, the Prefect shall have the right to interpret and declare the statutes, and also to resolve any difficulties that may arise.

Given in Rome, on the 10th of July, 1896.

C. CARD. MAZZELLA, Prefect.

IOSEPH, of the Order of Preachers.

When the Most Reverend Father, the Master General of the Order of Preachers, earnestly requested it, so that the Faculty of Canon Law, which was recently established in the Philosophical-Theological College of Saint Thomas Aquinas in the City, may be endowed with the protection of Apostolic authority and the privilege of conferring academic degrees upon clerics duly attending its schools; the Most Holy Pope Leo XIII, in an audience on the 27th of June, graciously referred the request to the Sacred Congregation of Studies, with the necessary and appropriate powers, so that, in the distinguished College of Saint Thomas, the Faculty of Canon Law may be canonically established, with the honor and privilege of conferring academic degrees, according to the wishes, and be added to the others existing in the city.

Therefore, since it is clear to us that adequate provision has been made for the proper establishment of the Faculty through the statutes and the decree of this Sacred Congregation of Studies, recently approved, we, exercising the powers granted to us by the Most Holy Pope Leo XIII, canonically erect it, and we decree that it may enjoy the privilege of conferring academic degrees, and all other rights and privileges with which institutions are rightfully endowed by the Holy See.

[*Latin ed. p. 377*]

From the Sacred Congregation of Studies, number 377, with the constitutions established by this Sacred Congregation of Studies remaining in force. Contrary opinions notwithstanding. Given in Rome, on the eleventh day of the month of July, in the year one thousand eight hundred and ninety-six.

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C. CARD. IOSEPH. MAZZELLA, Prefect of the Secretariate.

To the Most Reverend Father General of the Order of Preachers (Rome).

Most Reverend Father General,

By a circular of this Sacred Congregation, dated November 21, 1879, at the order of His Holiness, a decree of the same Holiness regarding the simultaneous enrollment of students in theological and canonical studies was communicated, forbidding, under penalty of nullity of degrees, the combination of both courses.

However, this prohibition was, with benevolent indulgence of the Holy Father, limited by a circular of this same Sacred Congregation, dated December 20, 1881, to those students who begin the course of theological studies, and not extended to those who, having already completed their studies in seminaries, wished to perfect themselves in canonical and theological disciplines at the institutions of Rome.

After a trial period of fifteen years of this limitation, the Holy Father, to whom it is so dear that the education of clerics aspiring to academic degrees in canonical and theological disciplines be not ordinary and common, but superior, more extensive, and more profound, as befits the excellence of the degrees and the dignity of the sacred sciences, and as the needs of the present time require; in the audience of the twenty-seventh day of the past month of June, ordered the undersigned Prefect of this Sacred Congregation to revoke this limitation, and therefore, extending the prohibition of simultaneous enrollment in both theological and canonical studies to those young men who, having completed their studies in seminaries, come to Rome to obtain academic degrees in theology and canon law.

Therefore, the three points of the first circular of November 21, 1879, remain fully in force for all university students, namely:

[*Latin ed. p. 378*]

378 FROM THE SACRED CONGREGATION OF STUDIES. 1°. Whosoever in the same year wishes to pursue both the theological and legal courses will lose all right to academic degrees in both courses. 2°. The Superiors of any school, college, or university, before admitting candidates to the examination for degrees, must require from the candidates a certificate, from which it is evident that they were not simultaneously enrolled in another institution. 3°. No one shall be admitted to the school of Canon Law, unless he proves in writing that he has waited for one year at institutions of Canon Law at some college or seminary. Furthermore, His Holiness decreed that the entire two-year period should be devoted to the study of Canon Law, with both the morning and afternoon classes customary; recommending to the respective Professors that they treat all canonical subjects extensively and profoundly, with due application to the law currently in force in the Church. And this greater breadth and depth of

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instruction, both in canonical and theological disciplines, is precisely the reason understood by the Holy Father for forbidding all, without exception, the combination of courses, since even the most gifted minds cannot, for many hours of the same day, profitably follow and attend extensive and profound courses in subjects that are difficult in themselves and often disparate from one another. These dispositions of His Holiness must be made known to the students of each institution, so that in the next academic year, 1896-1897, they may be faithfully observed. In extraordinary cases in which the Reverend Prefects of the aforementioned institutions should deem it necessary to grant a dispensation, either from the two-year period or from the obligation to attend only one course, such a dispensation, according to the disposition of the Bull *Quod divina sapientia*, title I, article 8, and circular of December 31, 1878, confirmed once again in this instance by the Holy Father, must be requested exclusively through the Sacred Congregation of Studies. The undersigned Prefect of the Sacred Congregation of Studies, by order of His Holiness, communicates this to Your Most Reverend Fatherhood for his understanding and guidance. Rome, July 11, 1896. Most affectionately, for your service, C. CARD. MAZELLA.

[*Latin ed. p. 379*]

379 FROM THE HOLY CONGREGATION OF THE INDEX, Feast Day VI, December 18, 1896. The Holy Congregation of Most Eminent and Most Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Lord our Pope Leo XIII and the Holy Apostolic See, which presides over the Index of books of pernicious doctrine, and concerning their condemnation, prohibition, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on December 18, 1896, condemned and condemns, prohibits and forbids, or orders that the following works be referred to the Index of Prohibited Books:

Chabauty, B. A. — *Etudes scripturales, patristiques, théologiques et philosophiques sur l'avenir de l'Eglise catholique, selon le plan divin, ou la régénération de l'humanité et la rénovation de l'univers.* — Poitiers, Imprimerie-relieuse Oudin et C, 1890. — *The System of Renovation* has not been condemned in itself by the Church. *Réponse aux adversaires.* Poitiers, Typographie Oudin et C. — *Discussion du Système de la Rénovation:* (Monthly Review, 18 fascicles). *Etat de la question eschatologique ou des choses finales au XIX siècle et le Système de la Rénovation.* — *The Encyclical on Biblical Studies and this System.* — Poitiers, Typographie Oudin et C.

Miralta, Constancio (true name: D. Jose Ferrandiz Ruiz).— *Memorias de un Clérigo pobre, con un prólogo de Ramon Chies.* — Madrid, José Matarredona Editor, 1891.

Marsigli, Prospero (true name: D. José Ferrandiz Ruiz).— *El Papa y

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los peregrinos — cronica verdad de la romería, jubileo en Roma y bodas de Leon XIII.* Version in castellana by P. Biosca. — Madrid, imprenta de Ramon Angulo San Vincente Baja, 78, 1888.

David, L. O. — *Le Clergé Canadien, sa Mission, son Œuvre.* — Montreal, 1896. — Decree of the Sacred Office, December 9, 1896.

[*Latin ed. p. 380*]

380 FROM THE SACRED CONGREGATION OF THE INDEX: Therefore, no one, of whatever rank and condition, may dare to publish, or, having published, to read or retain the aforementioned works, in whatever place and in whatever language; but they are bound to deliver them to the Ordinary of the place, or to Inquisitors of heretical depravity, under the penalties indicated in the Index of prohibited books. These matters, having been reported to the MOST HOLY POPE LEO XIII through me, the undersigned S. L. C. from the Secret Archives, His HOLINESS approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome on the 19th of December, 1896. ANDREW CARDINAL STEINHTHBER, Prefect. MARCELLINUS CICOGNANI, O.P., from the Secret Archives. Place of the Seal. On the 21st of December, 1896. I, the undersigned, Magister Cursor, testify that the aforementioned Decree was affixed and published in the City. Vincent Benaglia, Magister Cursor.

[*Latin ed. p. 381*]

381 APPENDIX III. DOCUMENTS ISSUED BY THE APOSTOLIC SEE, WHICH HAVE ALREADY BEEN ESTABLISHED FOR A LONG TIME, OR WHICH HAVE RECENTLY BEEN PUBLISHED FOR THE INFORMATION OF THE MODERATOR OF THE "EPHEMERIDES."

S. C. S. Office, August 3, 1858. — Vicariate Apostolic of Honan. Regarding contracts of purchase and sale. A contract in Honan is established in this manner: Peter, being in need of money, employs mediators to have his land or house formally registered and transferred to Paul, granting him both use and ownership, in exchange for a sufficient price, with written conditions stating that, after three years, Peter shall have the option of reclaiming his land or house, if he so desires; and that if, after the lapse of those three years, he does not present the agreed-upon sum of money, then Paul shall forever and always retain possession until the money is paid. Sometimes, this contract is written in other words, but with the same meaning; but however it is written, it is the same in practice, due to the law and custom without exception. It is to be noted, as Ligorius writes, that when dealing with such contracts, one must not concern oneself with the name, but with their nature; therefore, it matters little that our contract may have been called by a certain name because of the Synod of Sutchuen province; for, upon careful examination of its nature, it clearly bears the characteristics of a sale with a right of redemption. Two essential points, which I am certain constitute its

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essence, are evident either from the wording of the contract itself, or from the law, custom, and uniform practice, and from public awareness.

First point: The land or house passes into the hands of Paul, and I will say, with equivalent ownership to that acquired through a contract of sale with a right of redemption, so that all the risks and burdens of the property are borne by him. Paul will then be obligated to pay taxes, both ordinary and extraordinary, to make necessary assessments according to just conditions and as determined by custom; and if the land or house is destroyed by flood, inundation, earthquake, or fire, which are so frequent, or is occupied by enemies, as now happens daily by rebels, then it is lost for Paul, who cannot in any way recover his money. This is so clear and certain that, in such a case, the Chinese do not even think of recovering the money, nor could they even legally do so.

[*Latin ed. p. 382*]

582 APPENDIX III. Concerning the matter before the tribunal. — Regarding this human contract, it must be said that Blessed Liguori writes in his Theology, book 3, treatise 5, paragraph 843, concerning contracts: "It is asserted that this is a virtual loan, because this contract differs entirely from a loan. In a loan, if the pledged thing is lost, it is lost to the borrower; but here, if the assessed thing is lost, it is lost to the assessor." And the author here refers to paragraph 813, where the matter of a sale with a pact of redemption is discussed. According to the point. — Since this contract is so favorable to Peter, or the seller, it follows that the sum or price received from Paul is to be considered and truly as alienated, so that it can never be recovered by him, nor is he given a recourse to the tribunal for this. Thus, many families possess lands that they have held for 60, 100, 200, etc. years, which at some point later, due to poverty, they are forced to cede to others for only half the original price given by them: which they would not do if they could force Peter himself, the receiver of the double sum, to return it, as is the case in a loan. Meanwhile, Peter, having become wealthy, at his pleasure, assesses or buys other, more fertile lands, abandoning the first ones; for which he indeed has the right, but not the will, to reclaim them. Therefore, the following words were written by B. Liguori, book 3, treatise 5, paragraph 840, concerning contracts: "It cannot be said that this kind of contract is a certain virtual loan, for in a loan, the borrower is obliged to return the same thing, but in a lease (tang), the principal becomes dead, and only the interest can be returned at the will of the seller." In short, whatever Blessed Liguori himself, and Bouvier, and other theologians say about the contract of sale with a pact of redemption, and about the lease, is entirely true of our contract. However, the reasons for doubting that in the province of Sutchuen, from which the case was presented to the Sacred Congregation, the contract in question is established in the same way as in Honan are: 1. That the contract is presented as a simple usurious loan or

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antichresis, while ours is entirely in the nature of a lease and sale with a pact of redemption. 2. That previously, other missionaries in that province judged it differently, as is known from the words of the Synod, in which it is stated that the Bishop of Agalopolitan was the first to declare the contract of Sutchuen to be usurious, considering this practice as an ancient error. 3. That from the exposition of that contract, as established in the Theology of Perocheau, concerning contracts, it is quite clear that it differs entirely from the contract commonly used in the province of Honan. For he explains it as follows: "Pawning, as it exists among the Chinese, is a contract by which one receives another's land or house as a pledge, upon receiving money."

[*Latin ed. p. 383*]

APPENDIX III. 583 Whether the lease of a farm or house is of greater or lesser utility, under this condition that, when the term of the lease is completed, the owner of the property shall restore to the lessee the entire sum of money which he received from him, and the lessee shall return the leased property, retaining for himself the full fruits of the land which he received during the term of the contract, even if the value exceeds the labor and expenses which he incurred in cultivating the land. It is understood that, when the term of the lease is completed, the owner of the property is obligated to restore the entire sum to the lessee; but what is understood by those words, "when the term of the lease is completed"? Does it refer to that customary period of three years, as we said above, before Peter can recover his farm or house? Does it mean that Paul, after that determined period, can recover his money as in a loan? But this certainly would be false, for that condition is only in favor of Peter, who at that time can recover, or reclaim, his property; but Paul will neither then nor ever be able to recover his sum, unless it pleases Peter, and in the meantime he has no other right, except to patiently await the good pleasure of Peter or his heirs. Moreover, if in the exposition of the Theology of the Reverend Father Perocheau it is said that, in the meantime, it is part of Peter's duty to bear all burdens and to pay taxes, this is false in our contract with Honan; for public burdens or taxes do not remain for Peter, for all of these are borne by Paul, and he pays both ordinary and extraordinary taxes. R. The contract of purchase and sale, as it is explained, is permissible, provided that equity is observed between what is given and what is received, according to the rules handed down by the doctors. Furthermore, the Apostolic Vicar of Honan is instructed, if the opportunity arises, to inform the faithful that the Holy See previously forbade or declared illicit the so-called contract of lease, as first presented by the Apostolic Vicar in the year 1779 (and which was reported by the Fathers of the Synod of Sutchuen to their Synod), as it was presented to the same Holy See, which was entirely different in substantial circumstances. S. C. Council of H, March 1843 — Sylva Ducis. The faculty is granted to apply the parish Mass by vicars. R. P. The Reverend Fathers of the Sacred

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Congregation of Propaganda Fide, at the mandate of the Most Holy Father, have subjected to the definition of this Sacred Order the faculty requested by the Apostolic Vicar of Sylva Ducis (Bois le Duc), namely, to grant to several parishes of the Vicariate, so that they may, through their vicars, fulfill the obligation.

[*Latin ed. p. 384*]

384 APPENDIX III. Concerning the application of the Mass for the people. – It must be noted that, especially in Belgium, controversies have arisen concerning whether the application of this Mass is a personal obligation, so that it cannot be fulfilled by vicars or assistant pastors. The cause of this controversy was a work published by the priest Varhoesen, who demonstrated that this obligation is personal, both by the teaching of St. Alphonsus de Liguori and by the resolutions of this Holy Order. It must also be noted, in fact, that, according to the synodal statutes, especially those of Mechelen, the parochial Mass, which is called *summa*, is to be celebrated with singing at fixed hours, and the people attend it, firmly believing that this Mass is applied for them. Consequently, it has become customary for pastors, either due to a legitimate impediment, or even without a just cause, to entrust the celebration and application of this Mass for the people to their vicars. Furthermore, the Apostolic Vicar, consulted on this matter, has given the response that a pastor cannot, without a just cause, apply the Mass for the people through vicars. Consequently, many controversies have arisen concerning whether this obligation is truly personal, and what a just cause might be for it to be fulfilled by another. These matters needed to be clarified so that the terms of the concession could be issued; for it concerns a rescript that confirms the rule, especially in those jurisdictions. The Sacred Congregation of Bishops of the Holy Roman Church, composed of Cardinals and Interpreters of the Council of Trent, decided to issue a rescript: – "Granting to pastors the faculty to allow vicars to apply the Mass for the people in cases of true necessity, and provided that it is done for a canonical reason, with the understanding that..." Having considered the aforementioned, the Secretary of the Sacred Congregation presented a report to His Holiness, and the same Holiness benignly approved and confirmed the resolution of the Sacred Congregation. Therefore, the same Sacred Congregation graciously granted this faculty to the aforementioned Apostolic Vicar, with all and through all, strictly observing the form and tenor of the resolution described above.

[*Latin ed. p. 385*]

APPENDIX 585 III. From the Sacred Congregation of the Holy Office, March 10, 1852 – Vicariate Apostolic of Chen-si. Doubts regarding the commerce of opium. The Chinese law, as it is now and has always been since the time when the Chinese government recognized the use of opium, prohibits

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the sale of this substance. This prohibition is based on two reasons: first, because opium deprives the people of all sense of virtue; second, because it impoverishes the Empire. The Emperors of China and those skilled in governing the state have exerted every effort to ensure that this prohibitive law is not disregarded; countless edicts have been promulgated, and they have been enforced with the most severe penalties. Furthermore, European merchants have been repeatedly urged, in numerous letters, to cease engaging in this commerce and to refrain from attempting to corrupt the Chinese. Nevertheless, contrary to just and human law, this evil has persisted and has even increased daily due to the efforts of Europeans. Therefore, it is clear that those Chinese who sell and buy opium are violators of the laws of the Empire. It is also clear that they are assisted by European merchants in defrauding the law. Furthermore, the immoral consequences of the use of opium demonstrate that both Chinese and Europeans who deal in opium, whether for sale or for consumption, are led into a path contrary to Christian morals and religion. Indeed, it is evident that the use of opium is extremely harmful to both the body and the mind. A horrifying pallor and lividity deform the faces of all those who are addicted to its use. Their senses become dulled and weakened; memory fades, physical strength gives way to extreme weakness, the entire complexion becomes livid, the eyes are dull, the appetite is either destroyed or perverted, so that they only crave foods heavily seasoned with sugar; sleep neither restores nor refreshes them, so that these miserable people, unless aroused from their false rest earlier, can only be awakened later, and their first thought is for opium, because they feel a fire and dryness in their mouth and throat, which compels them to seek opium. If they do not receive it at the usual time, they suffer complete exhaustion, water flows from their eyes and nose, the whole body trembles with cold, the chest and head are pierced by excruciating pains; soon after, diarrhea follows, and if opium is not administered, death often occurs after a few days. The nature of the opium habit is such that it cannot be satisfied with regulated quantities; with the passage of time, the amount of the substance required must be increased, and then, weakened by their strength, suffering from illness, they can no longer earn a living, their families cannot be supported, and they have nothing left but misery and crime. Many ship captains are named who, because of the prompting of their conscience, have never accepted the transportation of opium, and they attribute the severe storms they have experienced to this illicit commerce, as well as the sudden deaths of merchants.

[*Latin ed. p. 386*]

38(5 APPENDIX III. Many who have spent many years working in China return to their homeland to enjoy the ill-gotten wealth, proclaiming God's vengeance. However, for us Catholic missionaries, a rule so grave concerning this matter is lacking. The Instruction of the Holy Congregation of

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[the] 23rd of June, 1830, concerning the opium question, is insufficient, because it contains only remote theological principles relating to the question. But since, from the principles laid down in the aforementioned Instruction of the Holy Congregation, it appears that the trade in opium will be condemned by the Church, therefore, with fervent prayers, we implore the Apostolic See to deign to resolve the matter. R. The trade and use of opium, as explained, are illicit, and therefore the Vicars Apostolic should prudently use all diligence to eradicate this use and trade. — His Holiness, Pope Pius IX, approved this resolution on the 27th of March, 1878. S. C. S. Office. Regarding doubts concerning the use of opium. The following proposition is put forward to some missionaries and the Bishop of the province of N., in China: In our province, now that the people are again under civil rule, the cultivation of opium is greatly expanding in the western provinces of the Chinese Empire, especially in N., which has been depopulated by internal strife and with a terrible manner. Many neophytes and pagans in certain districts enjoy the indulgence of the Emperor, who, at the request of the provincial governors, has repealed the prohibitive law concerning the planting of opium for a decade, due to the terrible poverty for which reason the province is sorely afflicted. In the district of N., there is no hope for missionaries to spread the faith, because the cultivation of opium is not tolerated, especially among the rural population, who prefer to adhere to the Catholic doctrine rather than to the cultivation of opium. Given the poverty of the people and the weak faith of the Christians, the cultivation of opium has grown so much that, even without the impediment of the mandarins, ecclesiastical law is not sufficient to eradicate it. Many Christians in the province still remain immune, although some engage in the trade of opium, while others smoke it. From the Response of the Sacred Congregation of the Holy Office, given on the 10th of March of the year 1852 to the Vicar Apostolic of Chensi in China, it is clear that the use and trade of opium are illicit, as explained; but the harmful effects of opium are depicted with very vivid colors, although the grave evils, whether physical or moral, resulting from the habitual use of opium, are agreed upon by all, both with regard to those individuals addicted to this vice, and their families, and with regard to the entire society.

[*Latin ed. p. 387*]

APPENDIX III. 587 are found. Furthermore, the Holy See does not speak of the cultivation of opium, although those who cultivate it appear to be, in a certain sense, collaborators in the matter. The absolute prohibition of the use of opium is not desired, if indeed it is detrimental to the good of individuals, families, and society; rather, tolerance of the cultivation of opium is desired, because, if tolerated, many would become Christians; however, it must be admitted that such Christians would be lukewarm. Moderate use of opium is also desired, for some individuals who, through

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long-standing use of opium smoke, are addicted, and who cannot, without serious detriment to their health, and often without the danger of death, abstain from opium; or, through the strength of their bodies, or the power of their minds, by which they govern themselves, they never exceed in the use of opium, and in them, indeed, the effects are not so sad; especially if they have begun to use opium as a medicine and at an advanced age. Indeed, all those who engage in the illicit cultivation of opium seem to suffer some temporal loss; but this people, not perceiving the things that are of the spirit, refuse to cease the cultivation of opium, even at the cost of a small loss of profit. Thus, if it is not tolerated, more Christians lose their faith, are unwilling to embrace the faith, and at the same time rush to eternal punishments. With these considerations in mind, it is necessary for the Holy Congregation of the Propagation of the Faith to take note that we, humble and sincere sons of the Holy, Catholic, Apostolic, and Roman Church, lack a certain and definitive rule on this very grave matter; therefore, with fervent prayers, we humbly implore that the Holy See deign to resolve the question.

1. Can all those who cultivate opium, without exception of persons, be admitted to the Sacraments?

2. Can families, even if the lord is not admitted, at least his wife, children, servants, and rural workers, who assist the lord, be admitted?

3. Can those who are unable to abstain from opium without the danger of death or serious detriment, due to long-standing habit, be admitted?

4. Can opium be taken as a medicine, because the danger of habit looms?

5. Can landowners permit tenants to cultivate opium on their land?

R. To 1. Affirmative, with the aforementioned considerations taken into account.

To 2. Provided for in the first.

To 3. Affirmative, however, with due diligence and precautions taken, so that the abuse of opium and the evil effects resulting from such abuse are avoided.

To 4. Affirmative, provided that all that has been mentioned in the third is observed.

To 5. Affirmative, as is already provided in the first (1).

(1) See *Collectio Yol.* XXIV, 506, where an Instruction concerning opium is related.

[*Latin ed. p. 388*]

588 APOSTOLIC CONSTITUTION from Our Most Holy Lord Leo XIII, Pope, Concerning the Prohibition and Censorship of Books.

LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD, for the perpetual remembrance of the offices and duties which it is necessary to observe

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with the greatest diligence and holiness in this apostolic endeavor, declares that it is constantly necessary to watch over and strive with all effort that the integrity of the faith and of Christian morals suffer no harm. And this, if ever, is most necessary in this time, when, with unrestrained license of minds and morals, almost all teachings, which the Savior of men, Jesus Christ, permitted to be preserved for the salvation of the human race within His Church, are brought into daily contention and dispute. In this contest, indeed, the cunning and arts of the enemies are varied and innumerable; but among the first are the dangers of intemperance in writing and disseminating to the public what is written wrongly. For nothing can be conceived as more pernicious for corrupting minds through contempt for religion and through many temptations to sin. Therefore, fearing so much this evil, and as guardian and avenger of the faith and morals of the Church, [the Church] has understood that remedies against such a pestilence must be taken; and for that reason, it has always striven to prevent men, as far as possible, from reading harmful books, that is, this worst of poisons.

The fervent zeal in this matter was seen in the recent times of Saint Paul; and in a similar manner, the vigilance of the holy Fathers, the commands of the Bishops, the decrees of the Councils, and all subsequent ages have demonstrated it. Especially, the monuments of literature testify to how much care and diligence the Roman Pontiffs have exercised in this regard, so that the writings of heretics might not spread openly, to the detriment of the public good. Antiquity is full of examples. Anastasius I condemned the pernicious writings of Origen; Innocentius I, those of Pelagius; Leo the Great, all the works of the Manichaeans, with a severe decree. Similar matters are known from the decretal letters concerning the acceptance and rejection of books, which Gelasius appropriately issued. Likewise, as time passed, the pestilent books of the Monothelites, Abelard, Marsilius of Padua, Wycliffe, and Huss were condemned by the judgment of the Apostolic See.

[*Latin ed. p. 389*]

APOSTOLIC CONSTITUTION 589. In the fifteenth century, a new form of literary art was discovered, and not only were those writings already published scrutinized, but efforts were begun to prevent any of that kind from being published in the future. And this precaution was not undertaken for a trivial reason, but entirely for the sake of public decency and safety at that time, because the very art, which by its nature is the best and the source of the greatest benefits, having been born for the propagation of Christian civilization, had been too quickly and to a great extent turned into an instrument of ruin. The evil of bad writings was greater and more rapidly effective because of the very speed with which they were disseminated. Therefore, with the best of intentions, Alexander VI and Leo X, Our predecessors, enacted certain laws appropriate to those times and

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customs, which were intended to restrain those engaged in the book trade. Soon, with a more serious surge, it became necessary to more vigilantly and forcefully prevent the contagion of harmful heresies. Therefore, Leo X, and later Clement XI, severely forbade anyone to read or possess the books of Luther. And since, unfortunately for that age, the impure flood of pernicious books had grown beyond measure and spread everywhere, a more extensive and immediate remedy seemed necessary. This remedy was indeed applied by our predecessor, Paul IV, namely, by listing the writings and books from which the faithful ought to be protected. Not long after, the Fathers of the Council of Trent sought to restrain the license of writing and reading with a new plan. By their will and command, prelates and theologians, in addition to expanding and refining the Index which Paul IV had issued, also drafted rules to be observed in the publication, reading, and use of books, to which Pius IV added the strength of apostolic authority. But the reason for public safety, which gave rise to the Tridentine Rules at the beginning, commanded nothing different in them, as the ages passed. Therefore, the Roman Pontiffs, especially Clement VIII, Alexander VII, and Benedict XIV, men of understanding and mindful of prudence, enacted more measures that would serve to explain and adapt them to the times. These things clearly demonstrate that the principal concern of the Roman Pontiffs has always been to prevent errors of opinion and the corruption of morals, these two flaws of society.

[*Latin ed. p. 390*]

590 APOSTOLIC CONSTITUTION: And that ruin, which is usually engendered and spread by wicked books, would be defended by the civil society of men. Nor did the effort fail, as long as, in governing and regulating public affairs, the law of reason preceded and forbade, and as long as the rulers of the states, with sacred authority, agreed upon this. What followed afterward, no one is ignorant. Indeed, as the circumstances of things and of men gradually changed, the Church, prudently in its own manner, did what seemed more expedient and useful for the salvation of men, having foreseen the nature of the times. Several prescriptions of the Religious Orders, which seemed to have lost their relevance with the passage of time, were either abolished by decree, or, with benign foresight, were allowed to fall into disuse, or were quietly abandoned. More recently, letters were sent to the Archbishops and Bishops from the pontifical authority, in which Pope Pius IX greatly mitigated the Rule of Saint Benedict. Furthermore, in anticipation of the great Council of the Vatican, learned men, chosen to prepare arguments, were entrusted with this task, to examine and evaluate all the Religious Rules, and to give their judgment on what should be done with them. They judged that they should be reformed, with unanimous agreement. Many of the Fathers openly declared that they themselves felt and desired this, and were requesting it from the Council. Letters exist

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from the Bishops of France on this matter, the opinion of which is that it is necessary and must be done without delay, so that those Rules and the entire Religious Order should be completely renewed in a manner more suited to our age and easier to observe. At the same time, the judgment of the Bishops of Germany was that the Rules of Saint Benedict should be subjected to a recent revision and redaction. To these, many Bishops from Italy and other regions concurred. All of these, if account is taken of the swiftness of progress, of civil institutions, and of the customs of the people, rightly demand and are in accordance with the maternal charity of the Holy Church. For in such a rapid course of progress, there is no field of science in which letters do not run wild: hence the daily influx of the most pestilent books. And what is more serious, the public laws not only connive at this, but give great license to it. Having considered these inconveniences, we judged that two things must be done, from which a certain and clear rule of action in this matter would be provided to all. Namely, the prohibition of the reading of disapproved books.

[*Latin ed. p. 391*]

APOSTOLIC CONSTITUTION 591, having been most diligently examined, we order that the Index be revised; and, when it is ready, that it be published in the vernacular. Furthermore, we have added to these Rules considerations, and we have decreed that, while preserving their nature, they should have somewhat milder effect, so that, unless someone is of evil disposition, it should not be difficult or burdensome to comply with them. In this, we not only follow the examples of Our predecessors, but we imitate the maternal care of the Church: which indeed desires nothing so much as to impart its benevolence, and has always taken care of its children, and continues to do so, so that it may lovingly and diligently attend to their infirmities. Therefore, after mature deliberation, and with the assistance of the Most Reverend Cardinals from the Sacred Council for noting books, we have decided to publish General Decrees, which are written below, and which, together with this Constitution, are to be used by the same Sacred Council henceforth exclusively, and to which all Catholic people throughout the world are to conform religiously. We wish these alone to have the force of law, abolishing the Rules, Observations, Instructions, Decrets, Admonitions, and any other things established by Our predecessors on this matter, except for the Constitution of Benedict XIV, which, as it has been in force until now, we wish to remain in force in its entirety in the future.

GENERAL DECREES concerning the prohibition and censure of books.

TITLE I. ON PROHIBITION

CHAPTER On Prohibited BOOKS.

I. Concerning the books of apostates, heretics, schismatics, and others.

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1. All books that were condemned before the year 1600 by the Supreme Pontiffs, or by ecumenical Councils, and which are not included in the new Index, are to be considered condemned in the same way as they were condemned before: except for those which are permitted by these General Decrees.

[*Latin ed. p. 392*]

392 CONSTITUTION APOSTOLIC. 2. Libri apostatarum, haereticorum, schismaticorum et quorumcumque scriptorum qui haeresim vel schisma propugnant, aut ipsa fundamenta religionis aliquatenus subvertunt, omnino prohibentur. 3. Item prohibentur libri acatholicorum, qui ex professo de religione tractant, nisi constet nihil in eis contra fidem catholicam contineri. 4. Libri eorundem auctorum, qui ex professo de religione non tractant, sed obiter tantum fidei veritates tangunt, iure ecclesiastico prohibiti non habeantur, donec speciali decreto proscripta fuerint.

CAPUT De Editionibus. II. Textus originalis et versionum Sacrae Scripturae.

5. Editiones textus originalis et antiquarum versionum catholicarum Sacrae Scripturae, etiam Ecclesiae Orientalis, ab acatholicis quibuscumque publicatae, etsi fideliter et integre editae apparent, iis dumtaxat, qui studiis theologicis vel biblicis dant operam, dummodo tamen non impugnentur in prolegomenis aut adnotationibus catholicae fidei dogmata, permittuntur.

6. Eadem ratione, et sub iisdem conditionibus, permittuntur aliae versiones Sacrorum Bibliorum, sive latina, sive alia lingua non vulgari, ab acatholicis editae.

CAPUT De Versionibus. III. Vernaculis Sacrae Scripturae.

7. Cum experimento manifestum sit, si Sacra Biblia vulgari lingua passim sine discrimine permittantur, plus inde, ob hominum temeritatem, detrimenti, quam utilitatis oriri; versiones omnes in lingua vernacula, etiam a viris catholicis confectae, omnino prohibentur, nisi fuerint ab Apostolica Sede approbatae, aut editae sub vigilantia Episcoporum cum adnotationibus desumptis ex Sanctis Ecclesiae Patribus, atque ex doctis catholicisque scriptoribus.

8. Interdicuntur versiones omnes Sacrorum Bibliorum, quavis vulgari lingua ab acatholicis quibuscumque confectae, et.

[*Latin ed. p. 393*]

CONSTITUTION APOSTOLIC 395, especially those which are disseminated by Biblical Societies, which the Roman Pontiffs have not infrequently condemned, since in them the most salutary laws of the Church concerning the publication of sacred books are entirely disregarded. Nevertheless, these versions are permitted to those who are engaged in theological or biblical studies: provided that they observe what has been established above

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(n. 5). CHAPTER IV. Concerning Obscene Books. 9. Books which explicitly treat of, narrate, or teach lascivious or obscene matters are altogether prohibited, since, not only is the faith, but also morals, which are easily corrupted by the reading of such books, are endangered. 10. Books by authors, whether ancient or modern, whom they call "classics," if they are infected with this very stain of impurity, are permitted only to those for whom the reason of office or of teaching excuses it; but in no way are they to be given to or read by boys or adolescents, unless they have been purged with diligent care. CHAPTER V. Concerning Certain Books of a Special Nature. 11. Books are condemned in which God, or the Blessed Virgin Mary, or the Saints, or the Catholic Church and its worship, or the Sacraments, or the Apostolic See, are disparaged. The same judgment of condemnation applies to those works in which the concepts of the Sacred Scripture are perverted, or its meaning is unduly restricted. Books are also prohibited which, through false accusations, affect the ecclesiastical hierarchy, or the clerical or religious state, with reproach. 12. It is forbidden to publish, read, or retain books in which sorcery, divination, magic, the evocation of spirits, and other superstitions of this kind are taught or recommended. 13. Books or writings which narrate new apparitions, revelations, visions, prophecies, miracles, or which introduce new devotions, even under the pretext that they are private, are to be considered suspect, if...

[*Latin ed. p. 394*]

394. APOSTOLIC CONSTITUTION: Books which are published without the legitimate permission of ecclesiastical superiors are prohibited. 14. Likewise, books are prohibited which declare war, suicide, or divorce to be permissible; those which treat of Masonic sects, or other societies of the same kind, and which maintain that these are useful and not harmful to the Church and to civil society; and those which defend errors condemned by the Apostolic See. CHAPTER VI. Concerning Sacred Images and Indulgences. 15. Images, in any way printed, of Our Lord Jesus Christ, of the Blessed Virgin Mary, of the Angels, and of the Saints, or of other Servants of God, which are contrary to the understanding and decrees of the Church, are altogether forbidden. Moreover, new [images], whether they have annexed prayers or are published without them, are not to be published without the permission of ecclesiastical authority. 16. To all is forbidden to publish, in any way, apocryphal indulgences, or those which have been condemned or revoked by the Holy Apostolic See. Those which have already been published are to be taken away from the hands of the faithful. 17. All books, summaries, pamphlets, sheets, etc., in which the grants of indulgences are contained, are not to be published without the permission of competent authority. CHAPTER VII. Concerning liturgical books and prayers. 18. In the authentic editions of the Missal, Breviary, Ritual, Ceremonial of Bishops, Roman Pontifical, and other liturgical books

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approved by the Holy Apostolic See, no one may presume to change anything; if this has been done, these new editions are prohibited. 19. All litanies, except the most ancient and common ones which are contained in the Breviaries, Missals, Pontificals, and Rituals, and except the litanies of the Blessed Virgin, which are usually recited in the sacred shrine of Loreto, and the litanies of the Most Holy Name of Jesus which have already been approved by the Holy See, are not to be published without revision and approval by the Ordinary.

[*Latin ed. p. 395*]

CONSTITUTION CANONICAL 395 20. No one, except with the license of legitimate authority, shall publicly disseminate books, or booklets, of prayer, devotion, or of the instruction of religion, moral, ascetic, mystical, or of any similar nature, even though they appear to contribute to the fostering of the piety of the Christian people; otherwise, they shall be prohibited. CHAPTER VIII. Concerning Diaries, Leaflets, and Periodicals. 21. Diaries, leaflets, and periodicals which, through their content, undermine religion or good morals, shall be considered prohibited not only by natural law, but also by ecclesiastical law. Ordinaries, where it is necessary, shall take care to appropriately warn the faithful of the danger and harm of such reading. 22. No one among Catholics, especially among ecclesiastical men, shall publish anything in such diaries, or leaflets, or periodicals, unless prompted by a just and reasonable cause. CHAPTER IX. Concerning the faculty of reading and retaining prohibited books. 23. Only those who have obtained appropriate permissions from the Apostolic See, or from those to whom it has delegated its authority, shall be able to read and retain books that have been prohibited, whether by special or by these General Decrees. 24. The Sacred Congregation of the Index has been appointed by the Roman Pontiffs to grant licenses for reading and retaining any prohibited books. Nevertheless, the Supreme Congregation of the Holy Office, and the Sacred Congregation for the Propagation of the Faith, also possess this power for the regions subject to their governance. For the City [Rome] alone, this faculty also belongs to the Master of the Sacred Palace. 25. Bishops and other Prelates, possessing quasi-episcopal jurisdiction, may grant permission for specific books, and only in urgent cases. If, however, they have obtained a general faculty from the Apostolic See to grant licenses to the faithful to read and retain prohibited books, they shall grant such permission only with discretion and for a just and reasonable cause.

[*Latin ed. p. 396*]

596 CONSTITUTIONAL DECREE 26. Those who have obtained the apostolic faculty for reading and retaining prohibited books cannot, therefore, read and retain any books whatsoever, nor ephemerides published by the local Ordinaries, unless they have been expressly granted,

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in the apostolic indult, the power to read and retain books condemned by anyone. Furthermore, those who have obtained permission to read prohibited books must remember that they are bound by a serious precept to keep such books in such a way that they do not come into the hands of others. CHAPTER Concerning the denunciation of harmful books. 27. Although it is the duty of all Catholics, and especially of those who excel in learning, to report harmful books to the Bishops or to the Apostolic See; nevertheless, this duty pertains especially to Nuncios, Apostolic Delegates, local Ordinaries, and Rectors of universities flourishing in Lodi. 28. It is advisable that in the denunciation of harmful books, not only the title of the book be indicated, but also, insofar as possible, the reasons should be explained for which the book is considered worthy of censure. And those to whom the denunciation is presented must keep the names of those who denounce secret. 29. Ordinaries, even as Delegates of the Apostolic See, should strive to prohibit and remove from the hands of the faithful, within their diocese, books and other writings that are harmful. They should submit to the Apostolic judgment those works or writings that require more subtle examination, or in which the judgment of the highest authority seems necessary to achieve a salutary effect. TITLE II, CONCERNING THE CENSURE OF BOOKS. CHAPTER Concerning those entrusted with the censorship of books. 30. It pertains to those who have the power to approve or permit the editions and versions of sacred books, as is evident from what has been stated above (n. 7).

[*Latin ed. p. 397*]

CONSTITUTION APOSTOLIC 597, 31. No one shall dare to publish again books that have been proscribed by the Apostolic See; and if, for a grave and reasonable cause, some particular exception seems admissible in this matter, it shall never be done unless first permission has been obtained from the Sacred Congregation of the Index, and with the conditions prescribed by that Congregation being observed.

32. Matters pertaining in any way to the causes of Beatification and Canonization of the Servants of God cannot be made public without the approval of the Congregation for the Religious, which is responsible for guarding the Sacred Rites.

33. The same is to be said concerning collections of decrees of individual Roman Congregations: these collections may not be published unless first permission has been obtained, and with the conditions prescribed by the moderators of each Congregation being observed.

34. Vicars and Missionaries Apostolic shall faithfully observe the decrees of the Sacred Congregation for the Propagation of the Faith concerning the publication of books.

35. The approval of books, the censorship of which is not reserved by the force of these decrees to the Apostolic See or to the Roman Congregations,

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belongs to the Ordinary of the place in which they are made public.

36. Regulars, besides the license of the Bishop, are to remember, according to the decree of the Holy Council of Trent, to obtain from the Prelate to whom they are subject the permission to publish a work. Both concessions shall be printed at the beginning or at the end of the work.

37. If an author residing in Rome wishes to print a book not in the City, but elsewhere, nothing further is required besides the approval of the Cardinal Vicar of the City and the Master of the Sacred Apostolic Palace.

CHAPTER II: Concerning the office of censors in the preliminary examination of books.

38. Bishops, whose duty it is to grant the permission to print books, should take care to employ men of piety and doctrine to examine them, men whose faith and integrity they can vouch for, men who will give nothing to favor, nothing to hatred, but who, having set aside all human affections, will consider only the glory of God and the benefit of the faithful people.

39. Censors should know that, according to the precept of Benedict XIV, they must judge with their minds free from all prejudices. Therefore, they should cast aside the affections of nation, family, school, or institution, and set aside the interests of particular parties.

[*Latin ed. p. 398*]

398. The Apostolic Constitution directs that the sacred dogmas of the Church, and the common doctrine of Catholics, which are contained in the decrees of General Councils, the Constitutions of the Roman Pontiffs, and the consensus of Doctors, be kept constantly before the eyes [of all]. 40. After careful examination, if nothing appears to obstruct the publication of a book, the Ordinary shall grant the author permission to publish it, to be printed at the beginning or at the end of the work, without charge in writing. CHAPTER III. Concerning books which must be subjected to prior censorship. 41. All the faithful are bound to subject to prior ecclesiastical censorship at least those books which concern the Divine Scriptures, Sacred Theology, Ecclesiastical History, Canon Law, Natural Theology, Ethics, and other similar religious or moral disciplines, and generally all writings in which religion and the honesty of morals are especially involved. 42. Secular clergy are not permitted to publish even books which treat solely of the arts and natural sciences without the consultation of their Ordinaries, so that they may give an example of obedience to them. They are also prohibited from undertaking the management of newspapers or periodicals without the prior permission of the Ordinaries. CHAPTER IV. Concerning printers and publishers of books. 43. No book subjected to ecclesiastical censorship shall be printed unless it bears at the beginning the name and surname of both the author and the publisher, as well as

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the place and year of printing and edition. However, if for just reasons, it seems necessary to conceal the name of the author, the power to permit this rests with the Ordinary. 44. Printers and publishers of books should know that new editions of the same work require a new approval, and that this approval, once granted, does not apply to a translation of the original text into another language. 45. Books condemned by the Apostolic See are to be considered prohibited everywhere and in every language into which they may be translated.

[*Latin ed. p. 399*]

CONSTITUTION APOSTOLIC 599 46. Whosoever are booksellers, especially those who boast of being Catholic, shall neither sell, nor lend, nor retain books that explicitly treat of obscene matters; and they shall not have any other prohibited books for sale, unless they have obtained permission from the Sacred Congregation of the Index through the Ordinary, nor shall they sell to anyone unless they can prudently judge that the request is legitimately made by the buyer. CHAPTER V. Concerning the penalties for those who transgress the statutes of the General Decrees. 47. All and each who, knowingly, without the authority of the Apostolic See, read books that promote the heresy of apostates and heretics, as well as books of any author specifically prohibited by Apostolic Letters, and who retain, print, and in any way defend such books, incur excommunication, reserved in a special manner to the Roman Pontiff. 48. Those who, without the approval of the Ordinary, print, or cause to be printed, books of the Sacred Scriptures, or annotations or commentaries thereof, incur excommunication, not reserved to anyone. 49. But those who have transgressed in other matters which are prescribed by these General Decrees, shall be seriously admonished by the Bishop, according to the gravity of the offense; and, if it seems opportune, they shall also be restrained by canonical penalties. We decree that these present letters, and everything contained therein, shall never, at any time, be noted or impugned for any flaw or defect of our will or intention, but shall always be valid and remain in their full force, and shall be inviolably observed by all, of whatever rank and prominence, in judgment and outside of it; and we declare that it shall be null and void, if anyone, through any authority or pretext, knowingly or unknowingly, should attempt to alter them in any way, contrary to the foregoing. We wish that copies of these letters, even printed ones, shall have the same validity as if they were written by hand, signed by the Notary, and sealed with the seal of a man of ecclesiastical dignity, as established by law.

[*Latin ed. p. 400*]

400 APOSTOLIC CONSTITUTION: Therefore, no man whatsoever shall be permitted to infringe this page of Our Constitution, ordinance, limitation, or derogation, nor to dare to contradict it with reckless audacity. —

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But if anyone should presume to attempt this, let him know that he will incur the wrath of Almighty God and of the blessed Apostles Peter and Paul. Given in Rome, at Saint Peter's, in the year of the Incarnation of Our Lord one thousand eight hundred and ninety-seven, on the eighth day before the Kalends of February, in the nineteenth year of Our Pontificate.

A. CARD. MACCHI

A. PANICI

Subdatarius
VISA DE Loco
CVRIA

I. DE AQUILA

E VICECOMITIBUS

Plumbi Reg. in' Secret. Br ecium

I. CUGNONIUS

EX S. CONGREGATIONE

CONCILII FOROLIVIEN. ET BRICTINORIEN.

.MATRIMONII

On May 2, 1806, Session 24, Chapter 1, Concerning Ref.

Assumpta, aged 3 years, on November 1, 1809, before her own parish priest, entered into marriage with Anthony, aged forty years, in the diocese of Forlivia. This marriage, although concluded very hastily, was contracted with mutual consent, but under a most ill-omened sign. Indeed, it appears that the spouses, from the very first night of marriage, have repeatedly failed to perform the marital act: therefore, the wife, believing her husband to be incapable of fulfilling his marital duties,

COMPENDIUM FACTI.

[Summary of Facts]

[*Latin ed. p. 401*]

FORLÌ AND BRICTON. 401. On the fourth day after the beginning of

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the marriage, she abandoned him and returned to her father's house. She was subsequently brought back to live with her husband by her mother, but after spending two more nights with him, during which, as she herself states, they attempted to consummate the marriage, she again bade him farewell, and did not return to him. After some time, on February 18, 1893, Assumpta did not hesitate to enter into a civil marriage with another man, with whom she still lives and has had children. Subsequently, the woman, contrite for her actions, presented petitions to the Supreme Pontiff, imploring him to declare her marriage null and void due to Anthony's impotence, or at least to grant her a dispensation, since the marriage had not been consummated. The Sacred Congregation, to which these petitions were transmitted, entrusted the Ordinary of Forlì with the instruction of the case, at the same time granting him the authority to use, as he deemed appropriate, the methods of the Instruction of the Holy Office, namely, the procedure of "Judex ad hoc deputatus." The Bishop then carried out this mandate himself, or, for the examination of witnesses residing outside the diocese, delegated the task, and in April 1894, the Holy Office received the proceedings, along with a brief summary of the conclusions that appeared to flow from the instruction: "1. Indeed, there are several arguments that suggest the husband's impotence, but they do not appear to be so conclusive as to warrant a declaration of nullity of the marriage based on the grounds of impotence. 2. Without a doubt, the non-consummation of the marriage seems to be evident." The Synoptic Disputation asks: 1° Whether the nullity of the marriage is established in this case, and in the negative; 2° Whether it is necessary to consult with the Most Holy Father regarding a dispensation from a valid but unconsummated marriage. Therefore, in my opinion, the answer to the question 1 is: it will be provided in the second. And indeed, although the expert physicians who examined Anthony's body without hesitation declared him unfit for the VOW OF A THEOLOGIAN. U.M. Acta, Vol. XXIX, page CCCXLIII, 26.

[*Latin ed. p. 402*]

402 FORLÌ AND BRIE. Regarding the generation and the simple act of copulation, however, as the Bishop of Forlì, the delegated judge, rightly notes, when physicians testify: "That the physical condition of this man is in a normal state in terms of form and number, it is clear to no one how dangerous and uncertain are judgments regarding impotence derived from other criteria. Furthermore, it is also certain from the records of the process that the spouses have only attempted to consummate the marriage on two occasions. Who would consider such an experiment sufficient to conclude that the man suffered from impotence, at least a relative, preceding, incurable, and permanent, at the time of the marriage contract?" Therefore, since a certain judgment regarding impotence cannot be rendered, and, as we will see, there is sufficient evidence of the lack of consummation; hence, it

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seems that the answer to Question 1 should be in the affirmative. Indeed, it seems that the answer to Question 2 should also be in the affirmative, since there is ample and overwhelming evidence of the lack of consummation of the marriage and the existence of its causes. Although the argument for the lack of consummation, derived from the examination of the woman's body, is lacking, since the woman has conceived a child from the man with whom she is civilly married; nevertheless, other arguments are not lacking from which the lack of consummation can be deduced with no less evidence. And first, there is the sworn testimony of the spouses themselves. However, the sworn testimony of the spouses, if it is supported by seventh-hand testimony and corroborated by other presumptions and aids, is considered, not only according to the opinions of DD. sententia, Cosci De separatorum lib. III, c. 11, n. 146, and Ursaya Dis. canon. t. 3, p. 4, p. 4, dis. 212, 138, but also by the practice of the Sacred Congregation, so that it alone can be sufficient to conclude the lack of consummation. Indeed, in our case, the testimony of the spouses is aided by all these arguments, so that, with any suspicion of collusion eliminated, it seems that credence should be given to them.

[*Latin ed. p. 403*]

FOROLIVIEN. AND BRIGTINORIEN. 405 And, above all, the testimony of seven witnesses is presented; for all the witnesses, having been summoned under oath, testify: "that the spouses are and were honest, and that they are persuaded that it is likely and that they believe that they have spoken the truth," as required by the Sacred Canons, 1840. Indeed, this testimony of seven witnesses gains even greater force when it is noted that the witnesses are not merely expressing the opinion of some domestic individuals, but are presenting the very voice and public reputation. Moreover, "a violent presumption is strengthened by concurring fame," Chapter 27 on Witnesses. Furthermore, the witnesses not only affirm the fact of the lack of consummation, under the authority of the spouses, but also provide the reason for their affirmation; that is, they assert that they are persuaded that the man is incapable of entering into marriage. Finally, there are other supporting factors and presumptions that also serve to remove any suspicion of collusion. Moreover, a) the spouses are presented by their own parish priests and witnesses as honest and religious persons; although, in general, the testimony of the spouses regarding the lack of consummation should be considered with suspicion of collusion, since it is given in their own cause, as stated by Cosci, De separatoribus, Book III, chapter II, number 143; nevertheless, in our case, the very honesty and piety of the spouses is considered a significant presumption of their veracity. b) The spouses testify about the lack of consummation not in a bare statement, but with all the circumstances; in such a way that their account readily appears to be true. c) Most importantly, this account is entirely consistent with what

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the spouses themselves reported from the very beginning of the marriage; that is, immediately after the marriage, that is, at a time not subject to suspicion, the spouses declared the lack of consummation of the marriage, and indicated the man's impotence as the reason. d) Finally, if the lack of consummation of the marriage is admitted, and that due to the defect of the man, no other reasonable motive for separation can be assigned. Certainly not hatred, and...

[*Latin ed. p. 404*]

404 FORLÌ AND BRICTINORO. At least there was antipathy between the spouses; whereas, on the contrary, almost all witnesses attest that the spouses entered into marriage spontaneously and with mutual consent. However, it cannot be asserted that there was a difficulty because Assumpta was civilly married to another man after the separation; this occurred two years and a half after the separation from the marriage. But neither can difficulties be alleged that the woman perhaps encountered in the husband's home. All witnesses agree that she was treated very well by the husband's parents. All of these things are also confirmed by the fact that both spouses, immediately after the separation, consulted doctors about their own ability to have intercourse, and indeed the man even consulted the wife's brother about his ability. Although what has been presented so far seems sufficient and more than sufficient to prove the lack of consummation of the marriage, even greater evidence is obtained from another argument which is derived from the judgment of experts who absolutely assert Anthony's inability to have intercourse. This conclusion is drawn from a careful examination not only of Anthony's own body, but also of his own moral qualities and habits of life. Although, from this judgment, it cannot be certainly concluded regarding absolute or relative impotence, antecedent and perpetual, it seems certain to conclude at least regarding the lack of consummation, especially considering the very brief experiment of a few days. It remains now to say something about the causes for obtaining a dispensation. Indeed, the Bishop of Forlì explains these causes briefly and effectively: "Although the woman misbehaved by abandoning her husband, and indeed she stained herself with the crime of adultery by being civilly married to another man, as a wife, she seems to deserve to be assisted by the Church through a dispensation from a valid but unconsummated marriage. Indeed (to use the words of the Reverend General Vicar of Brictinoro), it is impossible for the woman to return to her husband, either because there is a dissociation of affections, arising from the fact that the husband was, or appeared to be, impotent once or repeatedly; or because..."

[*Latin ed. p. 405*]

FORLÌ AND BRICTON, 405: A woman, joined to another man by civil

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marriage, is no longer wholly her own; civil law notwithstanding, she ought not to separate from him, especially if she has borne children from him. Indeed, although civil laws might permit this, and even if no children existed, there is, in my opinion, no room for doubt that, between divorce and dispensation, the latter should always be chosen, since it both prevents harm and fully considers the well-being of the woman, who is still young. It may also be alleged that there is impotence, of whose existence, although it cannot be certainly proven from what has been discussed above, it is nevertheless highly probable; but Cosmus (De separatioribus, Book III, chapter 2, paragraph 386) says: "When impotence is presented as a reason and cause for a gracious dispensation, it does not require certain and conclusive proof. But it is sufficient that the alleged impotence be so probable that the Supreme Pontiff may consider it to be true and be moved to grant the dispensation."

OPINION OF A CANONIST: In order to fulfill the duty entrusted to me by the Canonists with all due diligence, I believe that the following points should be presented to the Fathers with due reverence and submission of mind. First, the question arises of the validity of the marriage between Anthony and Assumpta; which is called into doubt by reason of the man's impotence. Indeed, experts from the Forlì court, deputed to examine the man's body, after describing Anthony's genitals in their report, came to the conclusion that he is not only incapable of procreation, but also of simple intercourse with any woman. Certainly, if the matter were to be decided solely on the basis of this expert judgment, the nullity of the marriage might perhaps seem likely. Even more so, because the imperfections that the experts found in Anthony's genitals are listed among the signs of impotence by the most celebrated Zacchia, Book III, title 2, question 10, paragraph 3, and they fully agree with what the cited Instruction "To the Judge Deputed for This Purpose" states: "It must be carefully examined whether his genitals are accurately conformed to the laws of nature: namely, whether the penis is..."

[*Latin ed. p. 406*]

406 FOROLIVIEN. AND BRICTINORIEN. must have a sufficient size and a firm erection capable of lasting long enough for coitus; whether the fibers are compact and firm, or rather flaccid and weak; whether the testicles are of a healthy nature and of normal size, etc. Furthermore, it is at least doubtful whether this can be applied in the case of a pre-existing and incurable impotence. For, in the first place, since, according to the accounts of the doctors, Anthony's impotence is said to be intrinsic, that is, arising from a defect of nature or a general organic condition, it would be presumed that it preceded the marriage, according to what is taught by Doctors Reifenstuel, *De frig. et male f.*, n. 28; Sánchez, *De matr.*, lib. 7, disp. 103, n. 5; Maschardus, *De prob. conci.*, 876, n. 19, and 2027, n. 3, etc. Regarding

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the duration, it is true that, as Cardinal De Luca states in *De matr.*, dec. 11, n. 18, « a presumption arises from the fact that this disability will increase in the future, in an age in which the power of procreation weakens and noticeably diminishes day by day »; but there is also the expressed judgment of experts. Nevertheless, it cannot be overlooked that there exist certain difficulties, so that, as we must admit, a legally proven impotence in Anthony exists, which would render that marriage with Assumpta null. It must be remembered that the spouses have only attempted to consummate the marriage a few times, and therefore, the canonical proof of three years of cohabitation, prescribed in Cap. Laudabilem, *De frig. et male f.*, cannot be alleged. Indeed, more frequent congresses would have been necessary to demonstrate the impotence, especially considering the external integrity of the man's genitals, which the doctors state are « in a normal state in terms of form and number ». If, despite this, the same doctors considered that they had sufficient evidence of Anthony's impotence based on other signs observed in him, it should be noted that in their report they speak only of certain signs, and not of all those that Zacchias lists in the aforementioned place, and from which, « when concurring together », impotence is said to be demonstrated. Furthermore, as the esteemed Gasparri states in *De matr.*, vol. 1, n. 253, these same signs are considered by experts in the medical art to be uncertain. Moreover,

[*Latin ed. p. 407*]

FOROLIVIEN and BRICTINORIEN, 407. The aforementioned physicians, resorting to moral arguments, and especially insisting on the confession of his own impotence given by Anthony, thus indicate that their judgment was formed more on conjectures than on physical signs. Furthermore, it must be added that Anthony, after his wife separated from him, presented himself to the physician Biagini, who subsequently became one of the experts appointed by the Curia, for a private examination of his body. This physician, in a letter dated December 1889, addressed to the parish priest of Casticciano, wrote: "Anthony exhibits no abnormality in his generative organs; and therefore, if he has been unable to consummate the marriage, it seems to be due to the aversion that the woman feels towards him, due to his prolonged state of chastity and his lack of intelligence." Given these circumstances, it is not surprising that the carnal union was not perfected on the two nights in which he attempted it. Indeed, from such words, not only is confirmation obtained of what I stated earlier regarding the conjectural judgment of the experts, but their conclusion itself seems to be strengthened. However, if we are to deny credence to the doctor Biagini, who, along with another expert, examined Anthony's body a second time on February 25, 1894, and discovered more physical signs of impotence, it is necessary to admit that the condition of the examined man's genitals had worsened from December 1889 to

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February 1894, so that signs of impotence appeared that had not been present before. But if this is the case, how can we maintain that his impotence was subsequent? Furthermore, even if it were proven that his impotence was subsequent, and no medications were administered at an opportune time, how could it then be considered irreparable? Therefore, it must be concluded that the primary argument for the impotence lies in the confession of the spouses, which, however, is not sufficient in this case to declare the marriage null, especially because the spouses only attempted the marital act twice or three times. Thus, I believe that in this case, there exists a presumption of the man's impotence, but not the full and judicial proof that is required in a matter of such importance.

[*Latin ed. p. 408*]

FOROLIVIEN and BRICTINORIEN require that the Canons be fulfilled, and therefore, regarding the proposed question, as is customary in similar cases in the Sacred Congregation of the Council, the response is: It will be addressed in the second part. After these matters, addressing another point of contention concerning the dispensation, I preface with what is otherwise evident: the entire matter depends on the demonstration of the lack of consummation of the marriage. For, since from the very nature of the facts, the most serious causes for granting a dispensation are manifest, namely, a strong doubt about the validity of the marriage, a separation of affections, the removal of scandal for others, and other similar matters which arise from a new civil bond contracted by the woman, it would seem entirely superfluous to discuss at length the existence and weight of these very causes. Furthermore, in this case, both spouses, having received the sacrament of confession, confess that the marriage was imperfectly consummated. These confessions are strengthened by the concordant testimony of witnesses under oath, who not only swear that the spouses' statements are to be given full credence, but also report certain circumstances which can be considered as supporting evidence for both confessions. Therefore, there is juridical proof of the lack of consummation of the marriage, as required by the Sacred Canons, sufficient to generate moral certainty, according to the spirit of Cap. Laudabilem § Si autem De frig. et male f. and Cap. fin. eod. tit. And there is no objection in this case regarding the lack of inspection of the woman's body, which has been known by another man; for, as Ursaya notes in Disc. eccl. vol. 3, p. 2, disp. 21, n. 138, the spouses' oath, taken with witnesses, is sufficient to prove the lack of consummation of the marriage, even without a physical examination. And Sánchez, a leading doctor in this matter, in De Matr. lib. 2, disp. 23, n. 1, clearly indicates that in such cases, the primary proof consists of the confession of the parties; while the physical examination is prescribed as a subsidiary argument, otherwise, he says, this remedy of dispensation would be denied to widows. And the Sacred Congregation of the Council has consistently held this in practice,

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as can be seen in Burgi S. Donnini on April 21 and August 25, 1877, and in Santiago de Compostela on December 14, 1878.

[*Latin ed. p. 409*]

FOROLIVIEN and BRICTINORIEN, 409 in Viterbo. February 28, 1891, in Reggio. June 27, 1891, in Concordio. August 29, 1891, in Engolsheim. December 12, 1891, and in many other places. Furthermore, although the impotence of Anthony cannot be said to be rigorously proven to the extent of declaring the marriage null under this head, it nevertheless greatly contributes to obtaining moral certainty regarding the lack of consummation of the marriage. The same holds true for the public reputation, which, in the case of this same man, weighs against the cause of an imperfect marriage. As I have already mentioned, full faith must be given to the statements of the spouses, and all witnesses confirm this with one voice, among whom are many who are older than any exception, while the others are all worthy of faith, as can be seen from the testimonies of the parish priests attached to the proceedings. Moreover, considering the statements of these and other witnesses, we seem to enter into what is taught by Cosci in *De separ. mat.*, book 3, chapter 2, paragraph 136: "If, in this matter, a solemn oath is added by seven blood relatives or neighbors from each side of the spouses, who, if they affirm that they firmly believe the confession of the spouses to be true, and that they have such a clear conscience that they are incapable of uttering a lie or perjury, they remove all suspicion of collusion and falsehood... their testimony is sufficient to be given credence by the spouses." Furthermore, not only do the witnesses, of whom I have spoken thus far, remove the suspicion of collusion between the spouses, but also certain circumstances, which are highly noteworthy, do so. The woman scarcely had lived with the man for the conjugal act, immediately abandoning him; and not after a month or two, but after only a few days, she proclaimed: "The man I received is of a cold nature, and is unable to perform that for which I received him." Then she went to the doctor Pradella, so that he might examine her, and thus know whether there was any impediment in the conformation of her female parts, from which the consummation of the marriage could not be perfected. The man, likewise, immediately consulted his brother's wife about his potency, and then the doctor Biagini, with whom he underwent a physical examination for the first time.

[*Latin ed. p. 410*]

410 FOROLIVIEN. ET BRICTINORIEN. mense Decembri 1889 se subiecit. Verum est quod haec facta, quae mature et tempore non suspecto eveniunt, clare ostendunt utrisque coniugibus statim, et cum nondum de dissolutione cogitabant, persuasum fuisse post brevissimam cohabitationem et paucos conatus consummationis eorum matrimonium rati confinia non excessisse. Cum igitur nulla alia causa assignari possit

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discessus mulieris et aversionis animi, concludendum videtur illam verum dixisse cum deposuit: unicam causam, quod a viro discessi, fuisse, quia cum eo explere matrimonium nequivi. Quibus sic stantibus, ad secundum dubium sub censura E. E. P. P. putarem esse respondendum: Consulendum SSmmo pro dispensatione super matrimonio rato et non consummato, vetito viro transitu ad alias nuptias, inconsulta S. C. ANIMADVERSIONES DEFENSORIS MATRIMONII EX OFFICIO. — Labente anno 1889 die 13 novembris Assumpta, 32 annos aetatis agens, et Antonius, 40 annos aetatis egressus, mutuo amore compulsi, iugati sunt. Sed Assumpta posteaquam sex dies cum Antonio mensam et talamum communes habuerat, discessit, virum proclamans palestrae coniugali ineptum. Non tamen illico Assumpta ad Ecclesiam recursum habuit, sed, quatuor elapsis ferme annis, idest die 8 Iunii 1893, postquam cum alio viro pseudo-matrimonium civile contraxerat prolemque susceperat. Quae res est argumentum, Assumptam haud sibi persuasum habere se causam bonam fovere. Idque eo magis timeo, quia medicus Andreas Pradella, qui Assumptae corpus recognovit statim ac illa a viro divertit, quaerenti sapientissime iudici: « An certus si mulierem corruptam, vel virginem mansisse? » respondere specioso sub praetextu detrectat. Huc accedit, ut Antonius non sat sibi cohaereat. Quamvis enim ingenuitate mirabili in se modo omnem culpam transferat, ab initio tamen, ait, ex mulieris causa accidisse ut matrimonium non perficeretur.

[*Latin ed. p. 411*]

FOROLIVIEN. AND BRICTINORIEN. 411. In order to present other cases, which readily emerge from an inquiry conducted with equal expertise and a dedication to truth, I urge this, because all matters which constitute the core of the present controversy are based on the bonds of faith. If the most learned consultants, both theologians and canonists, had these before their eyes, they would not only provide a response to the first of the written doubts, but perhaps even together with me, would give the answer – Negatively to both. Having considered these points, the following questions were proposed: 1. Does a nullity of marriage exist in this case? And to what extent? Negatively. 2. Should the Most Holy Congregation be consulted regarding a dispensation from a valid but unconsummated marriage in this case? RESOLUTION. The Sacred Congregation, after deliberation on May 2, 1896, decided to respond as follows: Regarding the first, provision will be made in the second. Regarding the second, affirmatively, forbidding the man from entering into other marriages without the consent of the Holy Congregation. NANCY-TOUL. DISPENSATION FROM MARRIAGE. July 25, 1896. Session 24, Chapter 5, Concerning the reform of marriage. Lombardy. A beloved military man, aged 27 years, entered into a legitimate marriage with Mary, aged nineteen years, before the parish priest of the Cathedral

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of Nancy-Toul on May 8, 1890. The newlyweds immediately began to live together as husband and wife, but, according to the man himself, the marriage could not be consummated, for he stated: "At the beginning, I made several attempts to have normal relations with my wife. With each attempt, my wife cried out and experienced nervous disturbances of such a nature that I..."

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 412*]

412. NANCEIEN. AND TULLEN. I found myself deeply affected, and I recoiled from resorting to a brutal act of consummation... so concerned was I about the danger of provoking a new crisis. In short, the marriage was not consummated. Filled with hope of finally consummating the marriage, the husband did not cease to repeat his attempts throughout the entire period of conjugal cohabitation, which was abruptly interrupted when his wife, on January 12, 1893, fled from Nanceien to her grandmother's house, two years and eight months after the celebration of the marriage. The husband endeavored in vain to bring Mary back to harmony, but she, shortly thereafter, initiated a divorce proceeding against her husband before the civil tribunal, and on July 26, of the year 1893, obtained a favorable judgment. The husband appealed from this judgment; but when the court of second instance confirmed the decision of the first tribunal, he appealed to the Supreme Pontiff, seeking a dispensation from his marriage, which was declared not consummated. The process was completed by a delegation from the Sacred Congregation of the Council, appointed by the Nanceien curia, and the woman, who had initially been defiant, subsequently appeared in court at the urging of the Nanceien bishop, bringing three witnesses and submitting to an examination of her virginity, which, however, was not permitted to be carried out, in accordance with all the prescriptions of the Instruction of the Sacred Congregation of the Council of August 22, 1840. The spouses, under oath, affirm the non-consummation of the marriage, but they do not agree on the reasons; for the husband asserts that he was unable to consummate the marriage due to the wife's excessive irritability of the nerves during attempts at intercourse, and therefore believes that she suffers from a vaginal ailment. Mary, on the other hand, testified that the husband never intended to fulfill the conjugal duty, but only to abuse her as a wife. A Synopsis of the Dispute: The two parties in the case diverge in their arguments, and initially attempt to demonstrate the non-consummation, either through the sworn testimony of the spouses, supported by the testimony of seven witnesses, or through a physical ex-

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amination of virginity. The spouses...

[*Latin ed. p. 413*]

NANCEIEN and TULLEN, in their defense, assert, according to the advocates, that the marriage was never consummated. For, in addition to what has been related in the exposition of the facts regarding the Judge's questioning, Amatus responded to the question: "Were the attempts at consummation renewed?" with: "Yes, but the result was always the same. Moreover, the desire grew stronger, and for this reason, the attempts were renewed at increasingly longer intervals." Maria, when questioned by the Judge, "Has the marriage been consummated?" replied, "Never." Furthermore, they do not wish to raise any suspicion of collusion, since Amatus did everything in his power to prevent the civil tribunal from granting a divorce, and Maria, although invited three times, initially refused to appear before the ecclesiastical tribunal, solely for the purpose of displeasing her husband. Moreover, the advocates believe that the spouses' confession has been confirmed by the events that occurred after Maria's departure. Indeed, three days after her departure, Maria wrote to her husband: "Do you see, my dear, there is something in our life that is extraordinary. It is that you have never made me your wife. Why? Tell me? I want to know this at all costs, and I dare not look you in the eyes, because, despite my apparent composure, I am ashamed of not being a wife, and I suffer from it. Do I disgust you? Do you doubt my virginity? Answer me frankly, and above all, do not say that it is my fault." On the same day, Amatus, without defending himself, admitted the lack of consummation and attributed it to himself, lest he drive his wife, "who was then experiencing a nervous crisis that seemed to border on madness," to despair. "If you have not been my wife, attribute it to my impressionability." The advocates point out that this response of the husband is lacking in the records, whereas, from the civil tribunal proceedings, it is undoubtedly clear that it was recorded. At approximately the same time, the advocates state, the spouses were manifesting to each other that there was no intimacy between them.

[*Latin ed. p. 414*]

414. NANCEIEN and TULLEN had not consummated their marriage. "Upon arriving, as Lady Geny of Mary, my granddaughter, told me, she said: 'He mistreated me, and I fear that this man will kill me...' Then she grew bolder and revealed this to me: 'He never made me his wife.'" The same was said by the man to his mother and sister. At a time when there was no suspicion, when Mary's grandmother, fearing that Amatus might deprive himself of life because of his wife's flight, approached Father Aloysius Cochard of the Society of Jesus, and earnestly begged him to console Amatus, and if possible, to reconcile the couple; and to him, not only Lady

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Greny, but also Amatus confessed that the marriage had never been consummated, as Father Cochard reports. To corroborate the testimonies of the witnesses, Father Cochard is cited, who said: "Yes, I am certain that at the time of the separation of the spouses, the marriage had not been consummated. The reason that makes me consider this to be certain is not so much the veracity and honorability of Mr. Aimée, but the circumstances in which he affirmed it to me. His wife was then reproaching him for not having consummated the marriage. If the marriage had been consummated, it would have been easy for him to refute this reproach; he had every interest in saying that the reproach of his wife was unfounded, and he did not ignore that Mary was using this fact as a weapon against him with certain people she consulted, and that she was thereby disinclining them against him. I add that he was then absolutely unaware that the fact of not having consummated the marriage could provide him with a sufficient reason to request from the Sovereign Pontiff a dispensation from the marriage bond, and therefore, one does not see why he would have allowed this accusation to weigh upon him if the marriage had been consummated." Furthermore, others stated, and they claim that the witnesses spoke in this way, who unanimously declare the couple to be incapable of consummating the marriage, and who also confirm the facts asserted by them. Thus far, the statements made by the spouses and their witnesses are wonderfully corroborated by the wise judgment of the physicians.

[*Latin ed. p. 415*]

NANCY-TOUL. 415. For indeed, two experts, chosen by the Judge from among the most distinguished of the city of Nancy-Toul, testified with the fullest certainty to Mary's virginity. Afterwards, the advocates, in order to anticipate the objections of the defender, demonstrated through a lengthy discourse that, according to the practice of the Holy Congregation, the presence of the hymen is a certain sign of virginity, that it is not an impediment to the examination of women, and that it can even be omitted, provided that sufficient evidence of the woman's integrity is obtained from other sources. One of the advocates addressed the head of the patron regarding the reasons for the dispensation, and noted that there is a great aversion of souls between these spouses, so that there is no longer any hope of restoring harmony between them. The repeated and fruitless attempts, by which Amatus immediately fled from his wife, and even while a civil divorce was being considered, tried to attract Mary to himself, sufficiently prove this. Furthermore, all the witnesses consider any reconciliation absolutely impossible. And the very words that the spouses have spoken on this matter completely exclude the possibility of reconciliation. The man affirms: "Reconciliation is today impossible." And the wife: "Never, never, never. I strongly protest against the possibility of a reconciliation." Given such discord, they argue, all canonists acknowledge that a dispensation

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should be granted. Among others, Coscius, in *De separ.*, book 3, chapter 2, paragraphs 117 and following, rightly notes: "Hatred is of such efficacy that it can produce the appearance of impotence between persons, and where hatred cannot be overcome, such impotence becomes permanent, and renders the consummation of marriage morally impossible." Hence, they conclude, another reason arises for obtaining the dispensation, which derives from the danger of grave incontinence. For the spouses, endowed with vigorous forces in their still flourishing age, are found to be those in whom the impulses of passion and the flames of lust are often more fervent. Furthermore, the civil divorce, by the weakness of the times, can easily entice souls to enter into new marriages.

[*Latin ed. p. 416*]

416 NANCY AND TULLEN. The defense, on the other hand, begins its argument with the supposed proof of the woman's lack of virginity. However, as Sánchez De Matrim, book 7, section 108, paragraph 8, and Zacchias, quaestiones mediae, legal, book 3, title 2, question 7, paragraph 1, state, this proof is often subject to deceptions and errors, especially in cases where more thorough examinations are lacking. In this case, the examination was insufficient: there was no bath, and the examination was conducted only by two doctors who, instead of examining separately, conspired together. "This examination," says the examining physician Marchai, "took place in the presence of Madame Gr. and with the participation of Mr. Alphonse Hergott, professor at the faculty of medicine." Furthermore, Madame G. is the grandmother of Maria, a woman of good reputation, and the aforementioned doctor Marchai is a relative of Maria. Therefore, the defense strongly argues that in our times, the prescriptions of our predecessors are not strictly observed in matrimonial cases, and that witnesses are often admitted who would not be considered in the most serious of controversies, and who would have been rejected as being biased. Without a doubt, the defense argues, Madame G. is not free from bias, as she is the grandmother of Maria and a significant party in this case; nor is Doctor Marchai, who cares for Maria and her family. It would be improper to suggest that Maria does not want the marriage to be annulled, the advocate argues, for Maria has already requested and, despite the resistance of her husband, obtained a civil divorce. When questioned by the ecclesiastical judge, she responded: "Never, never, never. I strongly protest against the possibility of a reconciliation." But even setting these things aside, such actions are recorded in the documents, which completely suggest the consummation of the Sacrament. Furthermore, Lombard Amatus greatly desired to indulge in conjugal relations and to have children, as he deeply desired Maria.

[*Latin ed. p. 417*]

NANCY AND TULLEN. In the year 417, he entered into marriage with

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her, captivated by her love and also enticed by her wealth. When *Mariam* inquired of the judge, "Did Mademoiselle Marie accept the marriage willingly?" *Lombardus* replied: "Certainly; she showed great affection for me at that time." And it is clear that *Lombardus* did not lie, as evidenced by the testimonies of G. *Maria*, his grandmother, and of Father Cochard, S.J. Furthermore, the advocate continues, nothing intervened to disturb their mutual love. Indeed, Camilla, his mother, and *Maria*, his sister, who (being two, they were questioned as one, and in the absence of the defender of the marriage) in response to the question, "For how long did the spouses live together? Did a good harmony exist between them?" replied: "The spouses lived together for two years and eight months. A perfect harmony seemed to reign between them, and in the eyes of the regiment, it was a model household." When *Lombardus* himself was questioned: "Did this good harmony last between you until the moment of your wife's departure?" he affirmed under oath: "Perfectly; and nothing could have made me suspect the difficulties that would follow." Therefore, the defender of the sacrament cannot persuade himself that these young spouses, being so disposed of mind towards each other, slept together in the same bed for two years and eight months, without the consummation of the marriage taking place, or that they persevered in conjugal harmony, if their embraces were ineffective. The advocate confesses before the judge that, due to an ailment, he was unable to consummate the marriage with his wife, but this, according to the defender, is false, as it appears from two sources. For, if such an illness existed, a doctor would have been consulted. And when *Maria* reproached her husband: "There is something extraordinary in our life. It is that you have never made me your wife. Why, tell me? I am ashamed not to be your wife, and I suffer from it. Answer me frankly, and above all, do not tell me that it is my fault," he, in turn, attributed the illness to his wife. On the contrary, according to the report of the lay tribunal, *Maria* wrote: "AtActa, Tom. XXIX. fasc. CCCXLIII. 27.

[*Latin ed. p. 418*]

418. NANCEIEN and TULLEN state that, in a letter dated January 16, 1893, a letter which will be recorded simultaneously with this judgment, Lombard confessed to his wife, who questioned him on the matter, that his excessive nervousness and his incredible, unbelievable impressionability were the causes of what she asked him; that he thus acknowledged, in the most categorical manner, that the failure to fulfill the conjugal duty stemmed from his own actions and not from those of his wife. The advocate further observes that the aforementioned letter of Lombard is not found among the records of the proceedings; but this may be the case, either because the plaintiff is clearly suppressing it, or because he himself holds it back, intending to deliver it to the lawyers at the last hour, so that it may not be subject to the compulsions prescribed by law, but rather,

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as if through a window, enter the courtroom. However, the advocate exclaims, there are greater matters: besides the fact that for two years and eight months, these spouses maintained "a model household," and when Maria separated from her husband, he testifies: "Nothing could have made me suspect the difficulties that would follow"; during that long period of time, neither Lombard nor Maria ever affirmed to anyone that there was a lack of consummation of the marriage; nor did anyone suspect this. On the contrary, immediately after the separation, both of them attempted, with remarkable concord, to suggest the lack of consummation of the marriage. Father Aloysius Cochard of the Society of Jesus heard of the alleged lack of consummation of the marriage from a suspect source and at a suspect time, the defender observes. In fact, the Lady G. after the flight of her niece, not only declared to the aforementioned mother of Lombard and sister of the plaintiff the alleged lack of consummation of the marriage, but furthermore, the Reverend Father Aloysius Cochard adds: "Madam G. came one day to see me," said Aloysius. Then, Lady G. sent Lombard to Aloysius. Lady G. and Lombard affirmed that they went to see Aloysius in order that he might reconcile the spouses, but their actions demonstrated that they intended to publicly declare the lack of consummation of the marriage before a prominent witness.

[*Latin ed. p. 419*]

NANCY AND TULLEN. In the year 419, it was alleged that the desire for conjugal reconciliation was feigned, so that Aloysius might not make a suspicious confession. Indeed, Aloysius swore: "I do not see Mary." However, the spouses could not be brought to agreement, if not even one of them had greeted the other. Thus, captivated by the simplicity of Father Aloysius, Mary's grandmother and Lombardy were entirely in favor of persuading Father Aloysius to seek an annulment of the marriage. Finally, the defender of the sacrament asks, why did G-eny and Lombardy so diligently relate the alleged lack of consummation to Father Aloysius, who during the entire period of conjugal cohabitation never saw the spouses, nor ever heard them speak of such things, while they said nothing to those hundreds who, during those thirty-two months of cohabitation, lived with the spouses, either as servants, or for the sake of friendship, or as family and intimate friends? Would they have related the alleged lack of consummation to them, if it were true, and would they have brought them before the Judge, who could testify and relate what they themselves saw and heard with their own eyes and ears during that time, and not Father Aloysius, who saw nothing and heard nothing during that time? But not one of the witnesses presented ever heard, or suspected, or even from a distance, that the marriage lacked consummation. With these things brought forth, it was deemed necessary to examine the question of whether consultation should be sought from the Most Holy [See] regarding a dispensation from a valid but unconsum-

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mated marriage in this case. RESOLUTION: The Sacred Congregation, after deliberation on July 25, 1896, decided to respond: Affirmative.

[*Latin ed. p. 420*]

420. INDULGENCE AT PLACENTIA IN SPAIN. August 22, 1896. By summary petition. SUMMARY OF FACTS. Joseph Benavides, in the year 1894, was raised to the dignity of canon cantor in the Cathedral Church of Placentia in Spain. He, having resided in Rome for many years, had established schools to be held in the early evening hours, for the free instruction of young people in the languages of foreign nations. Having obtained the canonry, he was required to leave Rome; therefore, he requested permission to remain in Rome for seven months. Moreover, one hundred and fifty young people, devoted to the schools, on June 29, 1894, humbly petitioned the Most Holy Prince, that he would deign to grant the man, who so deserved it, a dispensation from canonical residence. The Sacred Congregation of Rites requested the opinion of the Ordinary, who, in turn, received a negative opinion from the Chapter and transmitted it to the Sacred Congregation, adhering to the opinion of the Chapter. Therefore, on June 23, 1894, a response was issued: "Deferred." Canon Benavides established his residence in Placentia, but in October he began to suffer from throat ailments, and, in order to recover from this illness, experts advised the canon to go to Rome, where he could take the sulfurous waters of Tiburtina. For this reason, he requested and obtained permission from the Chapter to remain in Rome for two months. After these two months had elapsed, the doctors testified that Benavides would suffer a more severe relapse in his illness if he left the pleasant air of Rome, and that his very life would be in danger. Consequently, the Canon, despairing of obtaining a further extension of the indulgence from the Chapter, on December 18th, appealed to the Sacred Congregation. The Sacred Congregation again inquired of the Bishop and the Chapter, but received a negative response. The observations of the Chapter, approved by the Bishop, are primarily concerned with the fact that the Canons seem to be excessively concerned with...

[*Latin ed. p. 421*]

In Placentia, in Hispania, there arose a dispute concerning the legitimacy of a prolonged absence, with some arguing that neither the letter nor the spirit of the laws permitted such a lengthy separation from the Church benefice. Nevertheless, the Sacred Congregation of the Council (S. C. C.) deemed it necessary to respond on January 29, 1895: "Considering the testimony of the physicians, and the prior healing concerning the past, for the sake of grace, a dispensation from residence is granted, until the end of the month of February, without any hope of further extension, at the discretion and conscience of the Bishop, with the exception of distributions made only

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among those who are truly present."

At the end of February, Canon Benavides, presenting the testimonies of the physicians, and with the unanimous agreement of those present, asserted that the Orator could not leave Rome without endangering his health. Consequently, the same Sacred Congregation was urged to grant an extension of the indulgence; and on March 9, 1895, it received a response: "Considering the particular circumstances and the testimony of the physicians, for the sake of grace, an extension is granted, until the end of the month of March."

However, because the same request was repeated with no less insistence at the end of March, an edict was issued on April 6, 1895: "Let him rejoice in what he has obtained."

Then the Orator returned to Placentia, and, having undertaken to diligently fulfill his canonical duties, he demanded that the fruits of his labors be given to him, as he had earned them during his stay in Rome with the permission of the Sacred Congregation of the Council. However, the Chapter refused to grant this to him, and Canon Benavides informed the Sacred Congregation of this matter, which responded on June 26, 1895: "By virtue of the responses of January 28 and March 9 of the current year, the Orator has the right to the daily distributions, with the exception of those which are said to be made only among those who are truly present; and this should be notified to the Bishop."

However, it appears that the Bishop interpreted the response of January 28 in such a way as to grant the Orator the faculty of dispensing with, or at least, an indulgence from, his absence, which he had decided not to grant. In reality, the fruits of the Orator's three months of absence were divided into three parts, with two parts being given to him, and the remaining part to the Chapter. For it is the law of the Chapter that all the fruits should be used for distributions, namely, to be used in a certain manner for the benefit of the choir.

[*Latin ed. p. 422*]

422 In Plasencia, in Hispania, this question remained unresolved. At the end of October 1895, it was raised again due to a throat ailment, from which Canon Benavides claimed to be suffering, and he insisted on being granted leave. Two physicians from Plasencia, consulted on the matter, seemed to consider it necessary for him to travel to Rome to bathe in the Tiburtine sulfurous waters. The Chapter, and the Bishop himself, did not agree with this proposal, but granted the Orator eight days to travel to Madrid to consult with more renowned physicians on this matter. An examination was conducted by three physicians, with D. Moliner presiding, and they unanimously confirmed the opinion of the physicians from Plasencia. However, this did not sway the Chapter, nor the Bishop, who continued to resist Canon Benavides' insistence. He again appealed to the

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Sacred Congregation, and traveled to Rome himself, insisting that justice be done to him, adding another favorable opinion from physicians consulted in Rome. On March 9, 1896, the Sacred Congregation decreed: "Having heard the Chapter, and having transmitted to the Bishop, in copy, the testimony of the physicians presented by the Orator, for his information and consideration." The Bishop transmitted the Chapter's opinion, which he testified that he approved and confirmed. The Chapter members reported that Canon Benavides had immediately requested a leave of absence for seven months, and that, having been denied, it was said that he declared he would return to Rome during the winter. To allow the Canon to travel to Rome, the Chapter granted him two months, but refused to grant any further extension, having learned that Benavides was actively engaged in teaching duties in Rome. When, in November of 1895, the Orator again insisted on the Roman journey, the Chapter granted him eight days to travel to Madrid to consult with more renowned physicians. The Chapter members reported that while in Madrid, Benavides had improved so much in his throat condition that he was able to deliver a speech at the Academy of Historical Studies. Furthermore, they reported that no one from the region of Hispania had been present.

[*Latin ed. p. 423*]

PLACENTIA in HISPANIA is said to possess a benefice endowed with waters, either hot or sulfurous; which Benavides could also utilize, just as the inhabitants of Tiburtina enjoyed the waters of Rome. Regarding the testimonies of physicians, the Capitulars note that it is not established that the physicians of Placentia consulted with the Canon regarding the use of the Tiburtina waters; furthermore, only Doctor Moliner, among the physicians of Matritensium, left his testimony in this regard. Concerning the fruits to be received, there are certain special provisions for this Church, as recorded in writings in the Spanish language, from which it is gathered that the Canon does not have the right to receive the fruits of his benefice. A brief summary of the matter is presented below. Despite the Canon's clear petition to Benavides, there are very clear legal prescriptions, established by law in the Decretals, in title "De Clericis non residentibus in Ecclesia vel Praebenda," and also in the Council of Trent, session 24, chapter 2. Therefore, common law prevails, and it holds until it is certainly established that there is a legitimate reason for absence; consequently, in these circumstances, the Titular is at least obliged to serve through a substitute or coadjutor. Furthermore, it is the practice of the Sacred Congregation of Physicians to require attested testimonies, confirmed by oath: in the Regimen, on December 14, 1850, § Constans. Nevertheless, in this matter, it seems prudent to favor the request of the Orator, because infirmity excuses him from residence, as is evident; and then, so that affliction may not be added to affliction, as natural law commands, the fruits of daily distribu-

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tions are not taken from the infirm person who is absent. Indeed, the Sacred Congregation of Physicians, interpreting the intent of the Council of Trent, has repeatedly decreed that the fruits should not be taken from a Canon who is illegally absent, before it is clearly demonstrated by a condemning judgment of a judge that the absence is unlawful: thus report Garcias, part 2, De beneficiis, chapter 2, numbers 151 and 152, after the Rotam in the case of Caurien, concerning the fruits before Don Orano, on April 10, 1592; Barbosa, chapter 20, De canonicis, number 22.

[*Latin ed. p. 424*]

424. PLAGENTINA IN HISPANIA: Neither does this natural benevolence tolerate being delayed, and even less so does it admit of being hindered by the opposition of canons or others who have an interest, which, when proven by infirmity or a legitimate impediment to residence, is considered unjust and unreasonable, as evidenced by the resolution in Piscien. The Indult of December 6, 1760, in Praten; the Dispensation from choral duties of July 23, 1764; and the Indult of absence from Caserta of December 16, 1797. Furthermore, justice demands that, if someone has contracted an illness and is thereby rendered incapable of serving or even residing, they be compelled to resign the benefice; but neither is another compelled to serve or reside through a substitute, as declared by the Sacred Congregation in the aforementioned Piscien, July 23, 1764. These temporary dispensations are, for the most part, granted, and rarely exceed a period of three years. Moreover, the granting of such dispensations is always burdened by the precise necessity of the case; and when temporary dispensations are granted, they are usually accompanied by the clause "provided that the infirmity persists." I will cite another example, from which it is also evident that, even if already granted, indulgences are often remitted at the discretion of the Bishop, so that a formal rescript becomes a matter of procedure. In the matter of the Bishop, he interpreted the rescript on January 28, 1895, stating that the indulgence was remitted at his discretion and conscience. The Sacred Congregation, in a similar case in Messanen, regarding residence, on August 28, 1852, responded: "For an indulgence of three years from the date of the onset of infirmity, at the discretion of the Bishop, provided that the infirmity persists." Therefore, the same Sacred Congregation graciously granted the Bishop of Messanen the power to, if the aforementioned circumstances are truly present, grant the aforementioned canon a dispensation, so that he may be excused from choral duties for three years, beginning from the date of the onset of the infirmity, and yet may nevertheless receive all the fruits and daily distributions of his canonry, as if he were personally present at the choir and divine services; this being subject to the conscience of the aforementioned canon, regarding the precise necessity of being excused, as stated above, due to the aforementioned reason. With these considerations in mind, the matter was remitted

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to the Most Reverend Prelates, with prudence.

[*Latin ed. p. 425*]

PLACENCIA IN SPAIN. On August 2, 1896, the Holy Office issued a decree concerning what is just, both with regard to the past and the future. RESOLUTION. After deliberation, the Sacred Congregation decided to respond: "The indulgences granted by the Sacred Congregation of the Council of January 29 and March 9, 1895, are to be observed." REGARDING THE DIVISION OF SALERNO. On August 22, 1896, Session 21, Chapter 4, Concerning Reforms. In the Archdiocese of Salerno, near the town of Forino, there exists a parish church dedicated to the Most Holy Virgin greeted by the Angel and to Saint Nicholas of Bari, which consists of thirty members, including the archpriest of this church and seven assistant pastors, who reside respectively in their parishes in seven distinct towns, with the obligation of attending Mass at the parish church three times a week, and on other feast days, according to the regulations, to perform certain functions. Formerly, these towns constituted a single municipality, with Forino as the principal town; but in the year 1849, the town commonly called Contrada, and another called Ospedale, were separated from the ancient municipality and became a separate municipality. However, the town of Contrada is quite distant from the parish church, appearing to be about four thousand paces away; as the clergy of this town report, they are now primarily requesting that the parish be separated from the parish church and elevated to a distinct parish. They state that, due to the increase in the number of the faithful, they are unable to satisfy their needs if they continue to attend Mass more frequently during the week and on feast days at the parish church, with great expense of time and health. SUMMARY OF THE MATTER.

[*Latin ed. p. 426*]

426 SALERNITANA Hoc genus dismembrationis et erectionis desideratur a clero et a populo loci. Presbyteri, inquantum ad suas res, referunt: Archipresbyter debebit constituiri ex ducatis 150, ille cuiusvis parochi ex 60, cum onere addito unicuique missarum 50 in quolibet anno. Archiepiscopus, de more interrogatus pro informatione et voto, habet: se ire in sententiam, ut expetita divisio concedenda sit, praecipue ob distantiam, qua duo loci separantur; hac tamen sub conditione ut presbyteri e Contrada nuntium mittant, facta divisione, cuilibet praetensae super Ecclesiam archipresbyteralem Forino, et quibuslibet emolumentis, usque adhuc sibi obventis ex ecclesia Receptitia, cuius nunc sunt participantes. Disceptatio Synoptica DEDUCTIONES SACERDOTUM ECCLESIAE DISMEMBRANOAE. Ec- clesiae Receptitiae loci Forino, Sacerdotes participantes rite admoniti de instantia Sacerdotum participantium loci Contrada et Ospedale, ex iis sexdecim conventu habito, totisque viribus

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petitioni contrariae obsistunt variis rationum momentis suffulti; ut decus Ecclesiae receptitiae, protueantur. Et imprimis animadvertunt anno 1861 petitionem hanc ipsam factam fuisse, apud civile gubernium; a quo tamen reiecta fuit; quamvis tunc melior esset conditio Ecclesiae receptitiae, quae integrum potiebatur suum patrimonium; quod autem ablatum fuit anno 1867 ex lege gubernii invasoris, suppressa Ecclesia Receptitia. Post suppressionem tamen idem gubernium assignavit Archipresbytero 150, 100 vero ducatos unicuique ex septem coadiutoribus. Qui reditus vix satis sunt pro divino cultu unius ecclesiae Receptitiae; quomodo autem consulere potuerit duabus ecclesiis, iisdem reditibus, eodemque numero sacerdotum? Animadvertunt autem falsum esse quod distantia sit quatuor passuum millia, dum parum excedat duo millia. Veritati pariter haud esse consonum itinera percurrenda securitate carere; dum ex testibus constet, neminem ex pre-

[*Latin ed. p. 427*]

The Salernitan district has never been subjected to the dangers of thieves. Furthermore, these priests are not deterred by the imminent threat of danger, but by a lack of zeal; for on feast days, neither the parish church nor their own churches are frequented by these priests. Regarding this matter, and for other reasons, the priests involved are resisting with all their strength the desired division.

WHAT FAVORS THIS DIVISION. It has been noted that Contrada is four thousand paces distant from Forino; and to this distance must be added the grave danger arising from the road itself. Indeed, it is easily possible for a faithful person who approaches the church to be subjected to violence and robbery. Moreover, the procurator states that the aforementioned circumstances conform to the prescriptions of the Council of Trent, which states: "In those parishes in which, due to the distance of the place, or the difficulty of access, the parishioners cannot, without great inconvenience, attend the Sacraments and hear the divine services, new parishes may be established, even against the will of the rectors, according to the form of the Constitution of Alexander III, which begins 'Ad Audientiam'." The orator notes that the Holy Congregation of the Council has always adhered to these prescriptions of the Council of Trent. Therefore, full division, or the erection of a parish, was granted in Militen on January 29, 1735; in Derthonen on June 28, 1736; in Asculan on April 14, 1739; and in countless other decisions. Similarly, when there were two parishes and seven thousand parishioners in the city of Frusino, the Holy Congregation granted permission to erect a new one in a more convenient location within the city on May 22, 1884. From this, the patron argues, it is manifest that there is a lack of sacred worship, especially on more solemn days throughout the year, a fact confirmed by the words of the parish priests and clergy. The orator argues that the division of the land is necessary due to the lack of religious

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institutions with regard to the faithful of Contrada, and the administration of the Sacraments, referring to the words of the parish priests and clergy.

[*Latin ed. p. 428*]

428. The Salernitan advocate further notes that the division is being claimed due to disagreements existing between the clergy of the locality of Contrada and that of Forino; regarding this matter, he recalls the words already cited of the Archbishop of Salernitan. In these circumstances, the advocate concludes, there is cause for division. The Orator, proceeding to refute the objections of the opposing side, asserts that these objections are of no importance, because all considerations of antiquity and of the mother church must yield to the good of souls. The opponents, according to the Orator, invoke, to their advantage, a trivial service to the Church, namely, that which consists of observing the holy days of precept, Mondays and Saturdays; that there are more curates; that the Mass is celebrated with a greater number of benefits united; and that the division or separation of lands may provide an opportunity for disagreements and discord. For, the Orator replies, all these things must be considered insignificant in comparison to the salvation of souls. Regarding the fact that the Mass is celebrated with a greater number of united benefits, it should be remembered that the Council of Trent decreed in chapter 4, session 21, concerning reforms: "To those priests who will be assigned to newly erected churches, a portion shall be assigned by the Bishop's judgment from the fruits belonging to the mother church in any way, and if necessary, he may compel the people to provide what is sufficient to support the life of said priests; with any general or special reservation or endowment concerning said churches notwithstanding." From this chapter, the advocate observes, it is not necessary to agree with the Archbishop's request, which demands that the goods of the mother church should in no way be ceded to the new parish. Having made these observations, the purpose was to resolve the doubt as to whether and how there is cause for the division of churches in this case.

RESOLUTION. The Holy Congregation, after deliberation on this matter on August 22, 1896, decided to respond: It is not expedient.

[*Latin ed. p. 429*]

429 RIPANA IURIUM, September 12, 1896. Session 23, Chapter 18, Concerning Reforms. Father Savini Capocasa, of the diocese of Ripana, returned to his homeland in the autumn of 1878 from Vignale, a town in the foothills, where he had served for a year as a teacher.

At that time, a position as Prefect was vacant in the diocesan seminary in the first gymnasium class, which Father Capocasa earnestly desired to have granted to him. However, the situation was more difficult, because the Bishop and the directors of the seminary had already designated this po-

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sition for another priest, a certain Merlini. An opportunity arose to change this plan and fulfill Father Savini's wishes.

For at the same time, the position of Curator of the seminary's economic affairs was vacant, and Father Capocasa seemed suitable for this task. He, as is said, offered himself for this responsibility, even without any agreed-upon compensation, provided that the position of Prefect in the vacant class was relinquished.

SUMMARY OF THE FACTS: This condition appeared to be acceptable to the Rector of the seminary, who held considerable influence with the Bishop. Consequently, the Bishop agreed, and the desired position of teacher was entrusted to Father Capocasa, although this was not well received by other directors and teachers of the seminary.

During the scholastic year 1878-79, Father Capocasa served only as a teacher, leaving the administration of the seminary's assets to the Rector; and this was done, it seems, so that the opposition would not be too displeased.

In the year 1879, the same priest was entrusted by the Bishop with the second and third gymnasium classes, while the first class was relinquished, but he retained the same annual salary of 266 livres, as well as, as before, room and board. This year, Father Savini also assumed the duties of the seminary's economist without any compensation, but with the promise of another benefit from the canonical offerings.

[*Latin ed. p. 430*]

430 In RIPANA, adiacens ad Cathedralem Ecclesiam, res oeconomicae Seminarii non prosperabantur. Tamen, Savini, perseverans in adimplemento munerum suorum, negotitatus est ut stipendium non esset augmentatum, usque ad annum 1891, quo, cum ad Praeceptorem, eidem, addita esset obligatio tradendi novas disciplinas, stipendium ab L. 266 ad L. 416 elevatum est. Anno subsequente, cum aliae mutationes in ordinatione scholarum inductae essent, Praeceptor Capocasa postulavit ut honorarium augeatur, quod non obtinuit, et mense Novembri anni 1892, suam dimissio muneris nuntiavit. Interim, Sacerdos Savini protestabatur, affirmans ei adhuc mercedem integrum deberi pro gesta administratione, postquam spes obtinendi canonicatum in Ecclesia Cathedrali evanuerat. - Episcopus, contra, affirmabat nihil debere; propterea, Savini, ad perseverandam intentionem suam, mandatum procuratoriale fratri suo commisit, qui, hoc fundans, mense Novembri anni 1893, Seminarium apud iudices laicos in iudicium vocavit, petens L. 11,700, indemnitatem pro negotiorum gestione a fratre Sacerdote praestita, per decem tres annos, sine ulla mercede. Tunc, Ordinarius Sacerdotem Capocasa a divinis suspendit, ut scandalum reparet, sed maxime ut ipsum ad revocandum mandatum procuratoriale incitet. Hoc facere primo recusavit Savini, dicens, hoc inutile esse, quia fratri, per syngrapham, cesserat omnia sua credita et actiones, quam

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syngrapham rescindere vel revocare non amplius erat in sua potestate, sed in voluntate fratris; vi cuius cessionis, etiam revocato mandato, frater agere poterat in iudicio, dummodo nunc actum publicis registris insinuaret, quod adhuc non factum fuerat. Alioqui, protestabatur, se in cedendis suis actionibus, coram tribus testibus, fratri denunciasse obligationem impetrandi scilicet veniam auctoritatis ecclesiasticae quotiescumque Seminarium convenire vellet coram iudice laico. - Nihilo secius, Episcopo renuente eum absolvere nisi mandatum revocasset, Capocasa cesserit praecepto sui Ordinarii, quare vinculum suspensionis resolutum est.

[*Latin ed. p. 431*]

RIPANA 431 Finally, concerning the question of suspension, it must be noted that another circumstance was reported by the Bishop to the Sacred Congregation. Indeed, the Ordinary states that the priest Savini had transferred another portion of his rights and actions in favor of his brother, which was recorded in the public registers on August 9, 1894, in the city of Firmana. The first act was private and attested by witnesses under oath, while the second was public, signed by the same priest. However, the question arises whether any compensation is due to the plaintiff for the administration of the estate. The lawyers for both parties agreed on the following points: 1. Whether and to what extent compensation should be paid by the Seminary for the administration of the estate, and to what extent: Negatively; 2. Whether the plaintiff is bound by a written agreement to acknowledge that nothing further is due to him in this case. A summary of the arguments: The Seminary's lawyer argues that he cannot prove, through written documents, the agreements made by Capocasa, because the books in which the deliberations of the Seminary's economic council were recorded, and which were kept by the economist, have been lost. However, he states that there are abundant testimonies of men, without exception, who heard the conditions imposed by Capocasa; and who today would assert that the priest accepted the position with an express agreement to administer the Seminary's affairs without any compensation to the Seminary. Among these witnesses, it suffices to mention Bishop Franceschini, who at that time held the office of general vicar of the diocese; Bishop Ceppetelli, who obtained the Church of Ripana from the living of Alexander for many years; and Canon Castelli, the Rector of the Seminary when Father Savini was appointed as his teacher, especially through the efforts of the same Rector. For, because of the agreement made by Savini not to demand any special compensation for the office of economist, he persuaded the Bishop to accept this agreement.

[*Latin ed. p. 432*]

432. In RIPANA, it is clear that Capocasa is both useful and suitable for the Seminary and its prefect. Therefore, the procurator concludes, Capoc-

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asa cannot claim a legal right, but neither can he claim justice; because the agreed-upon salary entirely corresponds to a legitimate wage. Indeed, the annual accounts of 266 florins, besides food and lodging, represent an honorarium of 900 florins, which constitutes a substantial salary for a priest, especially when compared to those offered by the Cathedral Church. – Moreover, the procurator notes that a more generous honorarium was granted to the priest Savini than to Capocasa, considering the office of prefect. Furthermore, the procurator continues, after the movable and immovable property was seized by the government, the entire management of affairs is reduced to procuring food at the beginning of the year, and this must be accounted for along with other small customary expenses for books and supplies. Then, the procurator proceeds to refute the arguments presented by Savini. First of all, Savini objects to the reservations of funds made in the accounts and verbally with the Vicario Capitulari Consorti. The procurator observes that if it were sufficient to simply reserve funds for oneself in order to obtain legitimate rights, then those from whom these funds are due would have no reason to make such reservations; and that such a unilateral desire for something should not be equated with the legitimate acquisition of a thing. Moreover, since the auditors of the Seminary's accounts have never indicated anything about such a reservation, the procurator suspects that these declarations of credit were inserted into the accounts by Capocasa after the dispute arose. Secondly, Capocasa claims a right to compensation, since the hope of obtaining the promised canonry, in remuneration for the office of prefect, has vanished. However, the procurator observes that the promises made to him by the Bishops, he certainly cannot enforce against the Seminary, as is evident. Finally, while Capocasa extols his benefits to the economic affairs of the Seminary, on the one hand, on the other hand, he...

[*Latin ed. p. 433*]

At RIPANA, on the 433rd day, certain individuals designated by Bishop Nicholas concluded that this administrator of the Seminary had performed poorly. During the period of his administration, the accounts of the Seminary showed that, each year, the expenses exceeded the receipts by a sum of 6,000 *lire*. The procurator, appointed by the *Capocasa*, having been duly warned, offered no response. These matters having been briefly presented, the following questions were proposed for consideration: I. Whether and what recompense is due to the Seminary for this negligent administration. And, negatively: II. Whether the person in question is bound by a legally valid document to acknowledge that he owes nothing in this case.

RESOLUTION. After deliberation, the Sacred Congregation decided, on September 12, 1896, to respond as follows: To I. Negatively, in all respects. To II. Affirmatively, and to the extent indicated.

Regarding the imposition of taxes on ecclesiastical officials. On June 10,

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1896. In order to establish a uniform standard for levies on various acts of non-contentious ecclesiastical jurisdiction, and to prevent the burden of excessive taxes and the occasion for many disputes, Pope Innocent XI enacted a law, commonly known as the Innocentian Law, which appropriately regulated such levies. However, since this law was written in the Italian language, and therefore, by the common opinion of scholars, it was considered to apply properly only to the dioceses of Italy and adjacent islands, while serving as a guideline for action for others; thus, Acta. Tom. XXIX. fase. CCCXLIII. 28.

[*Latin ed. p. 434*]

454 Furthermore, the Most Holy Council seemed to have considered the inconveniences that had arisen from the law, and which this law sought to remedy. Moreover, after almost three centuries since the promulgation of the law, with the value and estimation of money having changed, and with society undergoing new and diverse developments, full observance of the Innocentian law in the very dioceses of Italy has become difficult, and sometimes even inappropriate; hence, the Ordinary prelates have increasingly requested that new and particular levies, different from the Innocentian ones, be approved or tolerated. After carefully considering these matters, and after consulting with the Archbishops, not only of Italy, but also of other regions, through the office of the Sacred Congregation of the Council, the Most Holy Pope Leo XIII established a special Commission within the Sacred Congregation of the Council, and entrusted it with the task of examining this matter and issuing its opinion. Indeed, in meetings held once and again by this Commission, three questions, which seemed to encompass the entire issue, were brought up for examination, namely: I. Whether and what taxes can be imposed, according to the rules of prudence and justice, in matters pertaining to the sacraments, and especially in the matter of marriage, as well as in matters pertaining to benefices. II. Whether, with regard to certain general norms that have been issued, the specific determination of taxes in each diocese should be left to the judgment of the Ordinary; or rather, whether it should be prescribed that this matter be addressed in provincial synods, and, if such synods cannot be held, in meetings of Bishops in each province and in Italy in each region, specifically convened for this purpose, so that, as far as possible, a uniform tax may be established in each province or region, to be submitted to the Sacred Congregation of the Council for approval. III. Whether and what other provisions should be adopted in this matter. To these questions, the Most Eminent Fathers, after the vote of the Consultors, considered it appropriate to respond as follows: To I, Affirmative, but with the proviso that, with regard to those matters that directly concern the administration of the sacraments, the disposition of chapter 42 of the Decree on Simony should be observed, namely, that ecclesiastical sacraments should be conferred freely, and that pious customs

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should be observed. As for the other acts that do not directly concern the administration of...

[*Latin ed. p. 435*]

From the decree of the Sacred Council, number 455, concerning the sacraments, such as the dispensation from announcements of marriage, the conferring of baptism in private homes, and other similar matters: I. Laudable customs are to be preserved, and due consideration must be given to the circumstances of places, times, and persons. II. Truly poor persons are to be exempted from any expenses; III. Taxes ought not to be so burdensome that they prevent the faithful from receiving the sacraments; IV. As for marriage in particular, the aforementioned taxes are to be remitted in cases in which there is a danger that the faithful might enter into concubinage; V. Finally, as for ecclesiastical benefices, taxes ought not to be disproportionately inadequate to the revenues of the benefices. To II, a negative response to the first part, and an affirmative response to the second. To III, an affirmative response, and the description or note of the taxes, as previously explained, is to be completed and transmitted as soon as possible to the Sacred Council Congregation for approval; which will only be granted as a trial, for the dioceses of Europe for five years, and for the rest for ten years. After this, a report on all of these matters was made to the Most Holy Lord by the undersigned Prefect of the Sacred Council Congregation, and His Holiness deigned to fully approve and confirm the resolution of the Fathers; and also commanded that it be diligently and faithfully observed by all to whom it applies, notwithstanding any contrary provisions. Given in Rome, from the halls of the Sacred Congregation of the Council, on the 10th of June, 1896. A. CARD. BENIAMINUS, DI PIETRO, S. C. ARCHIEPISCOPUS CONCILII NAZIANZENUS, Prefect. Pro-Secretarius.

[*Latin ed. p. 436*]

436 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS: Doubts Regarding the Profession of Religious. Most Blessed Father, Father M. Benedict, General Procurator of the Order of Cîteaux Reformers of Trapp, prostrate before Your Holiness, humbly presents the following:

The suppliant petition presented to the Holy Congregation of Bishops and Regular Canons by our Order twenty-five years ago was worded as follows: "After the completion of the novitiate, novices ought to make their profession within six months; moreover, due to the vicissitudes of time, young men may be called to military service at any moment. In these circumstances, it would be imprudent for a Superior to bind such individuals with the bonds of vows. Therefore, the suppliant earnestly implores Your Holiness to grant Superiors the faculty of extending the novitiate until the danger ceases."

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Thus, the aforementioned Holy Congregation judged it ought to be written: "From an audience of the Most Holy [Pope], held by the undersigned under-secretary of the Holy Congregation of Bishops and Regular Canons on April 21, 1871, His Holiness considered that the grace requested should not be granted; but rather, that until the aforementioned danger persists, those novices who have duly completed the time of their novitiate should be admitted to make a profession of simple vows, valid for six months, and renewable every six months."

Now, since there has often been doubt among us concerning the true meaning and intention of this Rescript, and since even now our students, as well as other citizens, in France are compelled to obey the military law, the aforementioned Procurator reverently proposes the following doubts to Your Holiness for resolution:

I. Is the professed, of whom mention is made in the Rescript, obligated to renew his profession for six months, if he certainly knows that he is to be called to military service before that six-month period is completed? And if the answer is affirmative:

II. Is such a profession, by its very nature, rendered null and void, the moment the professed, called to military service, leaves the monastery? And if the answer is negative:

[*Latin ed. p. 437*]

FROM THE SACRED CONGREGATION OF BISHOPS AND REGULARS, CANON 457, SECTION III. Whether such a profession is lapsable, so that one who has already been called to military service and has departed from all bonds of his vow, after these six months have elapsed while under arms, is released and freed by this very fact? And, negatively: IV. Whether the one who has made a profession is obligated, after the completion of his time of military service, to return to the Religious Order and to complete a period of simple vows for three years, if it should be necessary, before being admitted to solemn vows? By virtue of special faculties granted by the Most Holy Lord, the Sacred Congregation of Bishops, entrusted with the affairs and consultations of the Regular Bishops, having considered the aforementioned doubts, has decided to respond as follows: To I. Affirmative, but it should be understood that the declared vows cease at the very moment that the one who has made the profession is compelled to leave the monastery for the sake of military service. To II and III. As stated in the first. To IV. He is not obligated to return, and, as far as his willingness to return is concerned, he is obligated to inform his Superior of his perseverance in his vocation, and to take a new profession of simple vows, and to remain in it for a full period of three years before being admitted to the solemn vows, according to the form of the Apostolic Letters of Pius IX, dated February 1862, which begin: "Concerning the governance of the universal Church." Rome, September 2,

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1896. I. Card. VERGA, Prefect. L. © S. A. TROMBETTA, Secretary. FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, DECREE. The Sacred Congregation for the Propagation of the Faith, concerning matters of the Oriental Rite. The most excellent duty of apostolic men requires that these should walk in the field of the Lord, all with consent, and with equal minds, and should dedicate themselves to the same work with equal zeal. If, however, an enemy sows tares in the same field, or wicked men...

[*Latin ed. p. 438*]

458 FROM the Congregation for the Propagation of the Faith: Evil malice vexes and attacks the Missionaries themselves, or sudden events plunge them into grave distress and difficulties. Hence, it is clear how useful, and indeed necessary, it is that those who are to contend with the vices and concupiscences of men, with the enemies of the Cross of Christ, be guided and assisted by a single leader, with prudent zeal and charity. Thus, it will be easier to bring back to the bosom of Holy Mother Church those who, redeemed by the precious blood of Christ, yet sit in the darkness of infidelity, or languish in heresy or schism, so that they may be nurtured in eternal salvation. Furthermore, the Most Holy Pope Leo XIII, through Divine Providence, with the greatest wisdom and solicitude for all the Churches, especially the Eastern ones, by a Motu Proprio issued on March 19, 1896, added certain prescriptions, exhortations, and chapters to his Constitution *Orientalium*, and ordered that some things be changed in the order of law currently in force concerning the duties of the Apostolic Delegates who act as intermediaries with those who preside over missions in the Eastern regions. These instructions, the Holy Congregation gladly obeys, and has decided to declare and decree the following:

I. Apostolic Prefectures of Missions established among the Eastern Churches, within the boundaries of another Mission or Diocese, which therefore do not have a separate territory, are abolished, but already established Missions retain their full rights; and in the place of Prefects, Superiors of Missions are appointed.

II. The Superior General of the Religious Order to which a particular Apostolic Mission has been entrusted, shall propose to this Holy Congregation one of his own Order, distinguished by apostolic virtues and learning, whom the same Holy Congregation, if it judges it to be so in the Lord, shall safely appoint as Superior of the same Mission, with the title and office of Superior.

III. A patent letter or diploma from the Holy Congregation, addressed to the Superior of the Mission thus designated and promoted, together with the Apostolic faculties which the same Holy Congregation deems it proper to grant to him, shall be delivered by the Apostolic Delegate, in whose Legation the Mission is established.

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IV. In addition to the Superior of the Mission, the Supreme Head of the Religious Order shall appoint a Regular Superior, whose duty and...

[*Latin ed. p. 439*]

SECTION IV.

I. It shall be the duty of the Reverend Fathers of the Congregation for the Propagation of the Faith, with constant vigilance and care, to safeguard and promote the regular discipline of the Missionaries of their own Order; also, to entrust to each Missionary, according to his talents and abilities, the affairs of the Mission, provided that he undertakes nothing without the advice of the Superior of the Mission, so that, with united effort, they may contribute as much as possible to the benefit of the Church.

II. If it should seem opportune to the Superior General of a Religious Order, in certain circumstances, places, and with certain individuals, to combine the office of Superior of the Mission with the office of Superior of the Regular Order, he may do so, but not without the authority and permission of the Sacred Congregation.

III. The Superior of the Mission shall have the ordinary administration of those Christian communities which, through the labors of the Apostolic Missionaries, have either come from infidelity, heresy, or schism to the true faith, or have returned to it; until they can be returned to the Bishops or Ordinaries of their own rite. He shall also have the right to found new Mission stations, after first consulting with the Apostolic Delegate. Furthermore, it shall be the duty of the same Superior to determine and carry out whatever he deems prudent for the better administration of the Missions.

IV. The principal duty of the Apostolic Delegate shall be to see that the Missionaries never abandon their work, but diligently and faithfully perform their duties. He shall, in fact, continuously inspect the villages and places subject to the Mission, strengthen the weak in faith, bring back those who have fallen away or gone astray to the path of salvation, so that, by their labors, the Lord's field may become fertile, so that all may profit from Christ, to whom, in due time, a crown of justice will be given to His soldiers. Furthermore, the Delegate shall see to it that the Missionaries diligently and faithfully observe and fulfill the mandates and institutions of the Holy See.

V. Moreover, the Apostolic Delegate shall make every effort to ensure that he and the Superior of the Mission are fully in agreement on opinions and matters to be dealt with, which pertain to the administration and progress of the Mission. And if, at times, they should have different opinions on important matters of the Mission, the judgment of the Apostolic Delegate shall prevail, with the reservation, however, that the Superior of the Mission shall have the right to appeal to the Sacred Congregation, so

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that what he deems most conducive to the good of the Mission may be decided.

[*Latin ed. p. 440*]

440 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH: All of these matters, and each individual point, having been presented to the Most Holy Pope Leo XIII, He, with His authority, confirmed them, and repealed any contrary provisions, while firmly upholding other rights and duties that exist between the Local Ordinaries and the Missionaries. Given in Rome, from the offices of the aforementioned Sacred Congregation, on the 12th of September, 1896. M. CARD. LEDOCHOWSKI, Prefect. L. j$i S. ALOISIUS VECCIA, Secretary. FROM THE SACRED CONGREGATION FOR RITES: Concerning the confirmation of the cult rendered from time immemorial to the Servant of God, Pontius, a blessed abbot, who was born in the dynasty of Fucignaci in Sabaudia, at the beginning of the twelfth century, around the year 1100. The Servant of God, Pontius, the abbot, having blossomed in his youth, renounced the world and entered the monastery of regular clerics of Abundantia, and not only illuminated it with virtue and doctrine, but also brought it into conformity with the rule of St. Augustine and increased it. Sent to the place called Sixt, to oversee the construction of a new monastery, he, having completed this task, was the first abbot to be appointed when the same monastery was erected into an abbey by Pope Hadrian IV in the year 1155. Always obedient and devoted to the Abbey of Matri, in which he had previously been the Praepositus, in the year 1172 he also received the jurisdiction and title of Abbot of Abundantia; although he held this dignity for a short time. When he found the monastery of Sixt more suitable for preparing himself for death, which was drawing near, he returned there, and there, full of merits, he passed from this life to the heavenly homeland on the 26th of November, in the year 1178. His body was buried in the adjoining church, and after a few years, when the church itself was restored, it was transferred to a more worthy place, and finally, adorned with a noble monument and the ancient inscription "Beatus," it is religiously venerated by the faithful from all places, from the beginning until the present. And no support was lacking.

[*Latin ed. p. 441*]

FROM S. G. 441, concerning the rites of Saint Francis of Sales and his nephew, Charles Augustus of Sales, Bishop of Geneva, to confirm the ecclesiastical approval granted to this cult. Hence, in the year 1866, an inquiry was conducted by the Bishop of Annecy, Claude Magnin, for the perpetual commemoration of the cult offered to this Servant of God. However, the true ordinary process, necessary for the legal procedure, was completed in the year 1890, by order and with the authority of the Most Reverend Ernest

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Isoard, the present Bishop of Annecy. Therefore, considering the proofs which are contained in these process records, drawn from the testimonies of witnesses and from ancient documents, and having also heard the Fiscal Promoter, the ecclesiastical judge, delegated by the same Most Reverend Bishop of Annecy, pronounced a sentence in which he declared that nothing prevents the aforementioned cult from being instituted among the cases excepted by Pope Urban VIII. Furthermore, with the insistence of the Most Reverend Father Francis Xavier Hertzog, General Procurator of the Society of Saint Sulpice, and Promoter of this cause, and with the wishes of the Most Reverend Bishop and of the clergy and people of the Diocese of Annecy in mind, and with the Most Eminent and Most Reverend Cardinal Vincent Vannutelli, Promoter of this cause, in the meetings of the Ordinary Congregation of Sacred Rites, held on a certain day in Vatican, the following question was proposed for discussion: "Whether the sentence of the judge delegated by the Most Reverend Bishop of Annecy, concerning the cult offered from time immemorial to the Servant of God, Pontius, Abbot, or concerning the case excepted by the Decrees of Pope Urban VIII, should be confirmed in the case and for the purpose in question?" And the Sacred Congregation itself, after the report of the aforementioned Promoter, having carefully examined everything and having heard the Reverend Father Gustavo Persiani, Auditor of the Roman Rota and holding the office of Promoter of the Holy Office, decided to respond: Affirmative, that is, the sentence should be confirmed. On December 15, 1896. With all of the above related to His Holiness, Pope Leo XIII, through the undersigned Cardinal Prefect of the Congregation of Sacred Rites, His Holiness approved and confirmed the response of the Sacred Congregation itself, on the same day, month, and year.

C. CARD. ALOISI-MASELLA, Prefect of S. R. C.

L. * S. DIOMBDES PANICI, Secretary of S. R. C.

[*Latin ed. p. 442*]

FROM THE ORDINARY RITUAL OF PHILADELPHIA, or BUDWEIS, concerning the Beatification and Canonization of the Venerable Servant of God, John Nepomucene Neumann, Bishop of Philadelphia, of the Congregation of the Most Holy Redeemer. CONCERNING THE DOUBT: Whether a Commission for the introduction of the Cause should be appointed, in this case and for the purpose in question? The Angels of God, ministers of the divine spirit and guardians of men, sustain the Angels of the Churches, the Bishops, who are associated with them both in the dignity of their office and in the aid of grace. Among these, the Servant of God, John Nepomucene Neumann, Bishop of Philadelphia, of the Congregation of the Most Holy Redeemer, a true disciple and spiritual son of the Holy Father, Alphonsus M. de Liguori, deserves to be mentioned. He was born and baptized in Bohemia on the same day,

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March 28th, in the year 1811, and pious and devout parents, Philip and Agnes Lebisch, gave him the name John Nepomucene. The boy, diligent, modest, and devout, attended the primary schools in his homeland, and gladly served in ecclesiastical functions after receiving the sacred chrism. At the age of twelve, he was sent to Budweis, where he diligently studied first the humanities, then in the diocesan seminary, and finally in the University of Prague, in theological disciplines. On July 21st, 1832, he received the clerical tonsure and the minor orders from his Bishop, and, having visited many sanctuaries, like a penitent pilgrim, and desiring to imitate Saint Francis Xavier, his patron, he showed himself to be called to foreign missions. Having completed his course of studies with the highest honors, and having returned to his parents' home, where he was increasingly inflamed with a desire for missions, he was duly dismissed by his own Bishop of Budweis, and on April 20th, 1836, he set out for North America; and he was received most kindly by the Bishop of New York, who approved of him and promoted him to the sacred orders. The Servant of God, a new worker in the Lord's vineyard and devoted to sacred expeditions, with zeal and patience evangelized the people of the region near Niagara, which at that time belonged to the diocese of New York. The plan for undertaking a life of perfect observance, which he had conceived in Rochester while conversing piously with the Alphonsian Fathers, and which he had fostered elsewhere, led, with God's help, to this result. For on November 30th, in the year 1840, in the Congregation of the Most Holy Redeemer,

[*Latin ed. p. 443*]

From the *Rituale Romanum* 443, he then put it on, and, having completed two years of novitiate, on January 16, 1842, in the church of Saint Alphonsus, attached to the college in Baltimore, he pronounced his religious vows. He rendered very useful service to the Carmelite Sisters, also called our Ladies, and to the Hospicio of Saint Philomena in Pittsburgh. A most observant religious, a fervent missionary, and an assistant to the Provincial Superior, he was also the prefect of the aforementioned college in Baltimore until the year 1852, when the Bishop of Philadelphia, unexpectedly, was elected by the Apostolic See and, on March 28, was consecrated in the aforementioned church of Saint Alphonsus, and immediately went to his diocese. Performing his pastoral office for Christ, he traversed the entire diocese every two years, and he edified his priests by preaching the word of God, administering the sacraments, and observing the sacred rites. He erected or completed the cathedral church, the seminary for clerics, and the Asylum for children; and at the same time, he established parish schools and pious sodalities, and also brought into the diocese Brothers and Sisters of various religious congregations. In the year 1854, he was called to Rome by Pope Pius IX, and he attended the dogmatic

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definition concerning the Immaculate Conception of the Blessed Virgin Mary; he visited the seven basilicas of the city on foot and fasted five times; and, after visiting his homeland and his parents, returning to Philadelphia, he not only ordered the celebration of triduums in honor of the Immaculate Conception, but also introduced into his diocese the public exposition of the Most Holy Sacrament in the form of forty hours, as he had seen it practiced in Rome. Like an angel sent to earth, he was suddenly recalled to his heavenly homeland by God on January 5, 1860, and a large number of clergy and people gathered for his funeral and burial, which took place near the church of the Redemptorists at Saint Peter's. The reputation for holiness which John Nepomucene had acquired during his life, after his death, became increasingly clear and widespread, especially in the United States of America and in the diocese of Budweis, and was the cause for the institution of an Ordinary Inquiry. Therefore, after the proper Ordinary Processes, which are attested to by the aforementioned accounts, were completed and submitted to the Congregation of Sacred Rites, along with the writings of the Servant of God, the Most Holy Pope Leo XIII, through a Decree of the Sacred Congregation itself, dated June 10, 1895, approved these writings. Furthermore, through other prior Decrees issued on December 14 and 19, 1892, the same Most Holy Pope.

[*Latin ed. p. 444*]

444. Should the Sacred Congregation for the Propagation of the Faith have granted the faculty, so that a question regarding the signing of the Commission for the Introduction of the Cause of the Servant of God could be raised before the expiration of the ten-year period in the aforementioned Ordinariates, at the meetings of the Sacred Congregation, without the intervention and vote of the Consultors, then, at the urgent request of the Reverend Father Claudio Benedetti, a professed priest and general promoter of the Congregation of the Most Holy Redeemer, and considering the urgent letters of several Reverend and Most Reverend Cardinals of the Holy Roman Church, and of other men of ecclesiastical or civil distinction, among whom it is worthy of mention are the letters of the Most Serene Emperor Francis Joseph I of Austria and others from the same Imperial Family, the undersigned Cardinal, Prefect of the Sacred Congregation for Rites, promoter and relator of this Cause, at a meeting of the Sacred Congregation itself, held at the Vatican on the date indicated below, proposed the following question for discussion: "Is the Commission for the Introduction of the Cause to be signed, in this case and for the purpose in question?" And the Sacred Congregation itself, after the report of the undersigned promoter, having carefully considered all matters and having heard the Reverend Father D. Gustavo Persiani, Auditor of the Roman Rota and in charge of the office of the Promoter of the Holy Faith, decided to respond: "Affirmatively, that is, the Commission is to be signed, if it pleases the

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Most Holy [Father].” December 15, 1896. Having related all of the above to the Most Holy Lord, our Pope Leo XIII, through myself, the undersigned Cardinal, His Holiness, having approved the response of the Sacred Congregation for Rites, deigned to sign with his own hand the Commission for the Introduction of the Cause of the Venerable Servant of God, John Nepomucene Neumann, Bishop of Philadelphia, on the same day, month, and year.

C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation for Rites.

L. % S. Di o ME DE s PANICI, Secretary of the Sacred Congregation for Rites.

The faculty to say one Mass each week for the repose of souls.

June 8, 1890. For the relief of the souls detained in Purgatory, the Most Holy Lord, our Pope Leo XIII, has deigned to grant the Sacred Congregation for Rites the faculty to...

[*Latin ed. p. 445*]

From the Sacred Congregation of Rites, to Cardinals, Bishops, and other Prelates, to whom the privilege of private chapels pertains, it may be permitted in the same chapel a single private Mass for the repose of the dead, to be offered within the week on days not impeded by the double feast of the rite, which enjoys the right of translation, nor on Sundays or other obligatory feasts, nor on vigils, privileged weekdays, or octaves; and with the rubrics observed. Contrary opinions notwithstanding. June 8, 1896. Montauban. Regarding litanies of the Saints. On June 20, 1896, the Most Reverend Adolphe Fiard, Bishop of Montauban, humbly requested a solution to the following doubt from the Sacred Congregation: Whether the prohibition of reciting or singing the litanies, of which mention is made in the decrees of the Sacred Congregation of Rites of March 6, 1894, and November 28, 1895 (1), also includes any recitation thereof, by several persons together in public churches or chapels, without the intervention of a minister of the Church, acting as such? And the Sacred Congregation, with the undersigned Secretary, after a careful vote of the Liturgical Commission, having considered all matters carefully, deemed it fitting to respond to the aforementioned doubt. Affirmative. And thus it is written. June 20, 1896. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation. L. S. ALOISIUS TRIPEPI, Secretary. Regarding the beatification and canonization of the venerable Servant of God, Louise de Manille, widow Le Gras, foundress of the Daughters of Charity. The aforementioned Cardinal, Prefect of the Sacred Congregation, in the ordinary assembly of the aforementioned Sacred Congregation, on the aforementioned date, at the Vatican (Recole Vol. XXVII, 459), having received a petition from the Most Reverend Raphael M. Virili, Archbishop of Urban, and Postulator for the cause of the venerable

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Servant of God, Louise de Marillac, Le Gras, has signed.

[*Latin ed. p. 446*]

446 From the Sacred Congregation of Rites, according to the particular dispositions of Our Most Holy Lord Pope Leo XIII, published in the years 1878 and 1895, the following question was proposed for discussion: Whether the opinion of the Reverend Judge delegated by the Most Reverend Archbishop of Paris, concerning the lack of proper observance of the cult of the aforementioned Venerable Servant of God, or concerning the preparation of decrees by the Most Holy Pope Urban VIII, should be confirmed in this case, and to what effect. Furthermore, the same Sacred Congregation, after mature deliberation and after hearing the Reverend Father Gustavo Persiani, who held the office of Promoter of the Holy Faith, decided to respond: Affirmative. On January 5, 1897. All of which was reported to Our Most Holy Lord Pope Leo XIII by the undersigned Cardinal, and His Holiness approved and confirmed the response of the Sacred Congregation on the 11th day of the same month and year.

1 CARD. ALOISI-MASELLA, Prefect of the Sacred Roman Congregation.

L. * S. DIOMDBBS PANICI, Secretary of the Sacred Roman Congregation.

FROM THE SACRED CONGREGATION OF THE HOLY ROMAN INQUISITION

To the Reverend Father Archbishop of St. Louis in America.

Regarding questions concerning the authority of Bishops in Councils, etc.

Most Illustrious Lord, by letters dated December 22 of the past year, addressed to the Most Eminent Cardinal Secretary of this Supreme Congregation of the Holy Office, Your Eminence proposed the following questions:

I. Whether Bishops assembled in a Council, whether plenary or provincial, are to be considered to possess true legislative power?

II. Whether decrees of Councils, whether plenary or provincial, approved by the Holy See only in a general, and not in a special, manner, lack all force of law, unless they have been incorporated into diocesan statutes; and indeed, whether they are only valid to the extent that they have been so incorporated?

The matter, having been reviewed, was examined in a General Congregation held on Friday, the 4th of the month, on September 10, 1896, when the Most Eminent Cardinals, together with the General Inquisitors, refor-

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mulated the questions as follows:

[*Latin ed. p. 447*]

S. C. RITUUM 447 I. Whether Bishops, whether in a general council, or a plenary council, or a provincial council, legitimately assembled, possess true legislative power? II. Whether decrees of councils, whether general, or plenary, or provincial, confirmed, or approved, or at least recognized, by the Holy See in a general or specific form, lack all force unless they have been incorporated into diocesan statutes, and indeed, are only valid to the extent that they have been so incorporated? It was decided: To the first question, affirmatively. To the second question, negatively. And with these words, I bring this matter to your attention, praying that God may grant you all that is good and happy. As your brother, LUCIDUS M. CARD. PAROCCHI, from the SACRED CONGREGATION FOR INDULGENCES OF THE CITY AND THE WORLD. Decree from the audience of the Most Holy Father on February 2, 1897, concerning the praise, the beginning of which is "Dio sia benedetto" (May God be blessed). For a long time among the faithful, especially the Italians, it has been customary to use the pious formula, the beginning of which is "Dio sia benedetto," which is an act of religion, besides being, in itself, excellent, and which is also suitably effective, as it was originally instituted, to compensate for the honor of the Divine Name and of sacred things, which are so often violated daily by impious words. In recent times, in many places, with the concession or order of the Bishops, it has been introduced that this very formula be recited publicly in the church, either at the blessing with the Most Holy Sacrament, or after the celebration of the Divine Sacrifice. The Most Holy Pope Leo XIII, on several occasions, has approved and recommended this growing custom. Recently, in order to commend it more strongly and to foster it even more, he decreed that this very formula of praise be included among the sacred praises to the Most Sacred Heart of Jesus, and that the benefits of the sacred Indulgence, which were granted by his predecessors, Pope Pius VII and Pope Pius IX, be increased. Indeed, one, on July 23, 1801, granted "an indulgence of one year for each time that these praises are recited, at least with a contrite and devout heart." The other, on March 22, 1847, granted "the same indulgence also to souls in Purgatory."

[*Latin ed. p. 448*]

"M8 FROM THE HOLY GENERAL OFFICE OF INDULGENCES has declared it applicable"; and also, in the same year, on August 8th, it granted that "all the faithful, of both sexes, who recite the aforementioned praises at least once a day throughout the entire month, may obtain a plenary indulgence, on any one day of that month, of their own choosing, provided that they have confessed their sins sincerely and have received Holy Communion, and have visited a church or public oratory, and there have

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poured forth devout prayers to God for a certain period of time, according to the intention of His Holiness; and furthermore, it has also granted the power to apply the plenary indulgence to the faithful who have also passed away." Therefore, Our Most Holy Lord, with regard to the context of the aforementioned praises, has decreed that the praise placed in the fourth position, namely, "Benedetto il Nome di Gesù," should be followed by these words: "Benedetto il suo sacratissimo Cuore." And with regard to the indulgence, it has graciously granted that, in addition to the partial and plenary indulgences mentioned above, the partial indulgence shall be doubled, whenever these same praises are recited publicly and devoutly (expressed in whatever language), either after the celebration of the Divine Sacrifice or during Benediction with the Most Blessed Sacrament; and that this same indulgence may also be applied for the benefit of the souls of the faithful who are being purified in Purgatory. — This is valid for the present and for all future times, without any brief being required. Given in Rome, from the Secretariat of the Holy Congregation for Indulgences and Sacred Relics, on February 2, 1897. Fr. HIERONYMUS M. CARD. GOTTI, Prefect. A. ARCHIEP. NICOP., Secretary. Here follows the complete formula of the praises, of which we spoke above, for the benefit of those to whom it may not be sufficiently known: "May it be blessed: Blessed be His holy Name: Blessed be Jesus Christ, true God and true Man: Blessed be the Name of Jesus: Blessed be His most sacred Heart: Blessed be Jesus in the Most Holy Sacrament of the Altar: Blessed be the great Mother of God, Mary Most Holy: Blessed be her holy and immaculate Conception: Blessed be the name of Mary Virgin and Mother: Blessed be God and His Angels and His Saints."

[*Latin ed. p. 449*]

449 FROM THE HOLY CONGREGATION OF THE COUNCIL OF PARIS. DECREE REGARDING A MARRIAGE DISPENSATION, August 22, 1896. Session 24, chapter 5, Concerning Impediments to Marriage. The Reverend Oliver, aged 34, entered into a legitimate marriage on September 27, 1894, with Mary, aged 25, in the parish church of Bray-Lüe, in the Diocese of Versailles. The marriage, hastily arranged but united by mutual affection, unfortunately met with an unhappy outcome, since, according to their assertions, the spouses, throughout the entire period of their cohabitation, never engaged in marital relations, and indeed, not even once shared the same room or bed. Consequently, harmony quickly vanished between the spouses, and three months after the marriage, conjugal cohabitation ceased, and reconciliation proved impossible. Shortly thereafter, Oliver initiated a civil divorce proceeding in a secular court, which he obtained. Subsequently, he petitioned the Most Holy Congregation, requesting a dispensation from his marriage, alleging that it was valid but not consummated. The Holy Congregation, in accordance

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with the petitioner's request and the opinion of the Parisian Court, referred the case for examination, which the delegated judge submitted to the Holy Congregation on March 2 of the following year. Each of the spouses, in the canonical trial, confessed the lack of consummation of the marriage, but each attributed the blame to the other, and asserted that they had always been prepared to perform their conjugal duties.

SUMMARY OF THE FACTS. SYNOPTIC ACCOUNT. DEFENSE OF THE HUSBAND. Oliver's advocate argued that, in the present case, the non-consummation of the marriage was evident from several chapters. Acts, Volume XXIX, page 344.

[*Latin ed. p. 450*]

450. The Parisian argues, firstly, that there is a concordant deposition of the spouses. According to the advocate, the fullest faith must be given to these depositions, since seven witnesses, with one voice, attest to the spouses' religion and truthfulness. Furthermore, the advocate asserts that these witnesses not only maintain that full faith should be given to the spouses, but they are certain that the marriage was not consummated. This moral certainty, he argues, is particularly strong when dealing with individuals who know the parties involved well, and who were, in some way, present at the events. This, in itself, constitutes a very strong argument for the lack of consummation. Thus far, the advocate notes, the arguments presented would suffice, according to strict law, to prove the non-consummation of the marriage; for Pope Celestine III decreed: "If both declare, with the solemn oath of seven witnesses, whether relatives or neighbors of good reputation (if relatives are absent), that they have never known each other, and that, having performed the sacred rites, they have never become one flesh, then it seems that they may lawfully enter into a second marriage." Cap. Laudab. 5, Hb. IV, tit. XIV de frig. et male f. But he also has other arguments available. He asserts that the spouses, at times not suspected, have repeatedly revealed to various individuals, at various times, and in various places, that the marriage was not consummated. Moreover, almost all the other witnesses listed affirm that they knew of the non-consummation of the marriage at times not suspected. But, in addition to these confessions, made at times not suspected, the advocate derives another argument for the non-consummation from the unusual manner in which the spouses lived, who never used the same bedroom or the same bed, from letters written by them to their parents, from their sadness, from their reproaches, and from their discord; all of which, if carefully considered and gathered together, clearly demonstrate that the spouses were never made one flesh. If the defender of the bond were to object to the spouses' testimony in order to weaken it, contradictions

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would be found in their words.

[*Latin ed. p. 451*]

PARISIAN. In a case where the husband asserts that he has repeatedly requested his wife to fulfill her conjugal duties, and the wife denies this; the patron of the orator responds that this discrepancy does not pertain to the consummation of the marriage, in which the spouses fully agree, but to the causes of the lack of consummation, which do not in the least affect the substance of the sworn testimony. Furthermore, if the words of the spouses are not taken in a material sense, but the spirit of the words is carefully considered, namely, what the spouses intended to signify by "pour cette demande de l'accomplissement du 'devoir conjugal'," then all discrepancy immediately vanishes. Subsequently, the orator recalls the physical examination of the woman's virginity, from which he also affirms that there is presently an undeniable argument for the lack of consummation. For the physicians, having observed with canonical prescriptions, reported the integrity of Mary's body. The orator argued that there are not lacking canonical reasons for granting a gracious dispensation. Indeed, there is in this case an aversion between the spouses without any hope of reconciliation. Such an aversion is, according to all authorities, sufficient to grant a dispensation, as Ursaya teaches in *Disceptationes*, 21, nos. 60, 61, 62, vol. 3, part. 2, and in *Disputationes*, 7, nos. 76, 77, vol. 3, part. 1. The second cause for a dispensation, according to the advocate, is the sentence of divorce, already pronounced by the civil tribunal. And finally, he finds another cause of no less importance in the spiritual benefit of the petitioner for the dispensation, which is considered by many, as Perez De Matrimonio teaches in *Disputationes*, 20, sect. 7, no. 11, and as the Sacred Congregation teaches in its decrees.

OBSERVATIONS OF THE DEFENDER OF THE BOND. The defender of the marriage, in the first place, observes that the spouses have acted in agreement in the relaxation of the civil bond, simulating, on the part of the wife, an absolute reluctance to marital duties. Nor do they intend to act in a different manner before the Church, after having obtained a divorce from the civil tribunal. But the orator is confident that, this time, their conspiracy will not help them; if the arguments by which they believe they can obtain a dispensation are not convincing, and the facts are not true.

[*Latin ed. p. 452*]

452. The Parisian argues, "It is beyond dispute that Oliver and Mary freely, spontaneously, and with mutual affection entered into marriage; therefore, it does not appear likely that Mary persistently rejected her husband, as the lay judges have assumed, or, as is now alleged, that Oliver never requested the marital debt from his wife throughout the entire period of their cohabitation. It is indeed difficult to believe, as Coscius De sepa-

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ratione tor. lib. 5, cap. 2, no. 261 and following, states, 'that two spouses, both powerful, who voluntarily entered into the conjugal state to fulfill their lust, in an age when they are full of vigor, did not consummate the union.'" Furthermore, the patron of the orator vainly seeks support in can. Requisiti q. 1, caus. 34, or cap. 5 De frigidis et maleficiatis, claiming that it has been demonstrated that a sworn oath of conjugal fidelity, strengthened by a sworn testimony, is sufficient to create moral certainty in the minds of the judges. For the testimony of a sworn oath, when no information has been revealed by the spouses to the witnesses at a time when there was no suspicion, remains purely and simply a testimony of credibility, which is always required in marital cases "so that, with greater diligence, the marriage may be dissolved (according to Sánchez). This is a matter of the utmost importance." However, this testimony, properly speaking, does not constitute proof in itself. Indeed, it presupposes a perfect state, either through the appearance of the woman's body, or, as they say, through constriction, or impotence of intercourse, or through other facts divulged among relatives and neighbors at a time when there was no suspicion. But in the present case, the orator notes, not even one witness has heard or suspected anything about the lack of consummation of the marriage at a time when there was no suspicion. He is also surprised that among all the witnesses brought before the court, there were not even the spouses' servants, of whom there were reportedly many belonging to Oliver and Mary. These witnesses, who were with the spouses day and night, should have been examined, if love of truth was in their hearts. These, without a doubt, would have reported more valuable things than what they have reported. Mary's father, for example, said: "At the beginning of the marriage, the spouses seemed very 'happy';" and Lord Berenger, Vice-President of the Senate, who...

[*Latin ed. p. 453*]

The Parisian [official] states: "They seemed to get along very well and showed each other many kindnesses"; and also the Countess of Villeneuve testifies: "The common life of the young spouses seemed happy when I saw them eight days after the marriage." Furthermore, besides the servants, several letters passed between the spouses, and between Oliver and Mary's father, and between others; but these precious letters are vainly sought in the records. Then, recalling the defender of the sacrament, who mentions that the examination of Mary's virginity was carried out, he notes that such an examination is always subject to the dangers of all kinds of deceptions and falsehoods, as Sánchez de Matrimonio, book 7, chapter 108, number 8, states: "Often, he says, the eyes and hands (of those examining) are deceived; especially because women use many tricks with which virgins appear to be." And Zacchias, quaestiones mediae, legal, book 3, title 2, question 7, number 1, also affirms this. To avoid such dangers, the Holy

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See precisely defined the form in which the examination must be carried out on August 22, 1840. The Parisian court, as usual, did not follow the instructions prescribed in the Instruction of August 22, 1840; for Mary was not examined by three midwives, but by two doctors themselves. And so, it continues, not even five witnesses were used, but the entire most serious matter was decided by only two witnesses; indeed, it seems that only one witness was present. For in Paris, it is customary for experts to carry out the examination together. This is most wisely prohibited in the aforementioned Instruction of the Holy See: "The examination of the body must be carried out separately by each individual." Having stated these things on both sides, the purpose was to resolve the doubt: Whether it is necessary to consult with the Most Holy [See] regarding a dispensation from a marriage that is valid but not consummated in this case. RESOLUTION. After the matter was discussed by the Holy Council on August 22, 1896, it was decided to respond: Affirmative.

[*Latin ed. p. 454*]

At PARIS, or rather, at ORLEANS, on the 25th of July, 1896. MARRIAGE. Session 24, chapter 5, concerning Matrimony. Maria, a young woman of a respectable family and religiously educated, had scarcely reached the age of seventeen when, at the urging of her father and with the counsel of the Reverend Desnoyers, the General Vicar of Orleans, she was betrothed at the church of Saint Paternus in Orleans, on April 29th, 1869, to a young man named Joseph, who was twenty-seven years old. The marriage, though prepared in only a few days, was freely entered into by both parties, and all seemed to portend a happy union, but the event proved otherwise. For, as it appears, the husband, recognizing that he was unable to consummate the marriage, satisfied his lust with his wife through shameful acts. This conjugal behavior displeased Maria, yet, as she herself recounts, completely ignorant of the marital act, she revealed nothing of the secrets of the bedroom to anyone. However, with the passage of time, the woman suspected that these acts were not licit, and therefore she confided in her mother and her own confessor, who informed her that such acts were to be avoided entirely and were only permitted for the purpose of procreation. Then, as the woman recounts, Joseph attempted marital intercourse, but all of his efforts were in vain, because, due to the weakness of his virility, he was never able to penetrate the vagina, even though he used his fingers. From this abnormal condition, Maria's health began to decline daily, for, according to her account, the man had inflicted wounds on her with his fingernails, which turned into suppurating ulcers that caused her great suffering. When Joseph refused to cease this illicit conjugal behavior, the woman, with the advice of her confessor and her attending physician, refused to live with her husband any longer, seven years after the marriage.

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COMPENDIUM OF THE FACTS.

[*Latin ed. p. 455*]

PARIS. OR ORLEANS. 455. She was preparing for marriage; and it was decided that in the future, spouses should live under the same roof, but use separate beds, as a brother and sister. Joseph seems to have readily agreed to this condition. Four years later, on January 7, 1880, when their marriage was solemnly celebrated, Joseph fled from his wife's home, never to return. After nine years had passed since the husband's departure, Mary, before the civil tribunal of Paris, petitioned for a separation of property and person in her favor, which she easily obtained, the husband not objecting. Finally, at the end of the year 1892, she petitioned the Supreme Pontiff, that he would deign to grant a dispensation from her marriage, as if it were valid but not consummated, and at the same time, she requested that the proceedings not be held in the court of Orleans, but, for serious reasons approved by her own Ordinary, in the court of Paris. The Sacred Congregation approved the petitioner's prayers and delegated the Archbishop of Paris to conduct the proceedings. After the tribunal was established, the petitioner and her seventh witness were examined, and then it came to a physical examination of the woman's bodily integrity, which was performed by only two doctors. The man was summoned three times legally, and although he had promised that he was prepared to comply with the orders of the tribunal, he did not appear, nor did he present witnesses for his seventh witness, but only submitted to the court of Paris letters in which he vehemently protested against the wife's assertions, and maintained that he had consummated the marriage with her a hundred times. Therefore, in order to somehow compensate for the man's obstinacy, it was decided that, through the prudence of the judge, more witnesses should be summoned by the court. After the procedural documents were completed, the judge sent them to the Sacred Congregation, stating: "I have only one thing to note; namely, that the plaintiff in the case has presented herself to us in a completely commendable manner, but the defendant, although summoned several times, refused to appear before the tribunal, even though he lives in Paris and has access to this court. He indeed presented various reasons, in order to..."

[*Latin ed. p. 456*]

456. The Parisian, or Aurelian, was released from the obligation to compare [testimony], but the fear that he might be forced to confess his impotence seems to be the true reason why he avoided the questioning. *Disputatio Synoptica DEFENSIO MULIERIS.* The advocate for the actress begins by stating that the proof of non-consummation should result from three sources, namely: the sworn testimony of the parties, the testimony of seven witnesses, and the physical examination of the woman. These three

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types of evidence are clearly evident from the records of the case. First of all, there is the sworn testimony of the wife, who, having taken an oath before the Judge, recounted with the utmost sincerity: "In the early days of the marriage, there were abnormal contacts, which were not the fulfillment of the conjugal duty, and to which I submitted, because my mother had told me that, since my husband was a Christian, I should trust him and let him do as he pleased. My husband never asked me to perform the regular act of conjugal intercourse. I spoke to my Confessor about what was happening between my husband and me, and my Confessor told me not to yield to my husband's desires, but to ask him to perform the conjugal act." This judicial confession is, according to the advocate, entirely conclusive, especially if it is compared with other declarations, whether made in court or outside of it. The woman is always found to be consistent and coherent in recounting the story of her unhappy marriage, from the first night of marriage to the day of separation; this consistent and sincere account is not a simple and bare statement of the facts, but carefully recounts the circumstances of events, places, and times. Furthermore, the advocate argues that the actress's testimony should be considered reliable if it is compared with the testimonies of witnesses who are most familiar with the matter and who offer no contradictions. Indeed, the witness Argant, who had heard the secret confession of Mary on this matter, confirmed the woman's testimony.

[*Latin ed. p. 457*]

PARISIAN, OR AURELIAN, 457. In the same manner, another confessor, Desnoyers, the general vicar of Aurelian, testified. Montgey, the niece of the woman, affirms that the marriage remained unconsummated due to a certain impotence of the man. To this, the advocate adds, and it is consistent, that Henry d'Acre, a witness by office, stated: "It was to the husband that the responsibility for this lack of consummation was attributed, due to his impotence, relative to his conformation." However, since there are so many witnesses, all of greater standing, who give the most ample testimony regarding the woman's virtue and scrupulous truthfulness, and who relate facts, referring to a time without suspicion, confirming the lack of consummation; the woman believes that the testimony of Aloysius Dandier should be entirely rejected, who, after affirming that he fully trusted in the woman's honor and truthfulness, nevertheless protested that his affirmation regarding the lack of consummation was not sufficient for him to believe that the marriage was unconsummated. Furthermore, according to the advocate, the obstinacy of this man, Joseph, is a persistent argument against the cause advocated by the woman. Such obstinacy, besides being considered as a tacit confession in law, and the Sacred Congregation of the Council, with constant practice, having granted dispensations in similar cases, clearly demonstrates his impotence in the present situation. For if

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Joseph were not impotent, and if the marriage had truly been consummated, he would not only have asserted his virility and the consummation of the marriage extrajudicially, but he would have confirmed his assertions before the judge and by all possible means. All that has been said regarding the lack of consummation of the marriage receives irrefutable confirmation, the advocate continues, from the examination of the woman's body, as prescribed by law. The sworn physicians attest that the woman's genital organs are entirely intact, and that the marriage has not been consummated. This unanimous judgment of the experts, if necessary, can be corroborated, according to the advocate, by the testimony of Doctors Le Bec and Ozanam, who previously examined the woman's body extrajudicially.

[*Latin ed. p. 458*]

458 PARIS. OR ORLEANS. Finally, the advocate delivers a discourse on the causes for a dispensation, among which, as is most highly regarded, is the doubt or probability of the impotence of either spouse, as Sánchez states in book 2, section 16, paragraph 6; Cosci in book 1, chapter 16, paragraph 197, and in book 3, chapter 2, paragraph 386; and Ursaia in volume 3, part 2, paragraph 103. In the present case, however, he says, it is not a matter of doubt, but the husband's impotence is entirely and manifestly certain, and it appears from the documents to have been incurable from the beginning. Indeed, Joseph himself writes to his wife, after their separation concerning the matter: "I have brought misfortune upon you, Mary; I have poisoned your life, but please believe that I alone was the cause of it... It is irreparable, and it will be the worm that gnaws at my life. If we are not reunited on earth, we will be united in heaven." And the physician, Ozanam, who examined the advocate's body, judges Joseph's impotence to be incurable, saying: "I affirm that the insufficiency was due only to the husband's inability to achieve an erection, and fifteen years have passed in this way, leaving no hope of a possible change." Another cause for a dispensation, equally recognized by the Holy Congregation, according to the advocate, is Mary's extreme repugnance and aversion towards her husband, to the extent that any reconciliation becomes impossible. The Reverend Desnoyers, Vicar General of Orleans, also testifies: "As for resuming the common life, it is impossible," and all the other witnesses agree.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. The defender of the marriage begins by noting that, according to the testimonies, Mary lived with Joseph in the same bed for eight years. Truly, no one will easily believe that Mary endured this for so long with a tranquil spirit, being subjected to such treatment by her husband, both in body and soul. And even less that she repeatedly begged Joseph to return. Furthermore, he adds, that Mary, while attempting to demonstrate the lack of consummation of the marriage, involves herself in so many snares, from which she will never be able to escape. Indeed, she herself says: "For me, I must admit

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that I believed the marriage to be consummated; I even made novenas to obtain children..."

[*Latin ed. p. 459*]

PARIS, OR ELSE ORLEANS. 459 souls. It was only in 1888 or 1889 that Mr. Doctor Ozanam informed me that my marriage had not been consummated, after visiting me during my civil trial." And Mary, the mother, affirms: "I only learned after two or three months that the marriage had not been consummated. My daughter's health seemed to be declining, and I consulted my confessor about what I should do. He ordered me to question my daughter about what was happening between her and her husband, and, if necessary, to instruct her." From these statements, according to the speaker, it is clear that, within the second or third month after the marriage, the matter was discussed openly by the mother and daughter, Mary, with the counsel of a confessor, and that the marriage was judged to be unconsummated, and Joseph was considered an unproductive partner in the conjugal union. But if this is so, it is scarcely understood how it could have happened that Joseph persevered in his wife's house for twelve years, and then Mary boasted of the husband's return for another ten years. But Mary herself condemns herself when, in court, she swears: "It was only in 1888 or 1889 that Mr. Doctor Ozanam informed me that my marriage had not been consummated... I must admit that I believed the marriage to be consummated; I even made novenas to have children." Furthermore, Mary presents her spiritual director, Reverend Desnoyers, the Vicar General of Orleans, who testifies: "After several years, I learned from the wife whom I was guiding, and who gave me full permission to speak, that the marriage had not been consummated; she repeated this to me several times." But if Desnoyers heard this from Mary, it certainly happened before the year 1875; for, as the defender observes, from the year 1874, Mary did not have Desnoyers, but the parish priest, Gustav Argant, as her spiritual director. Indeed, continues the advocate, while a medical examination may show the marriage to be unconsummated, everyone knows that such an examination is susceptible to deceptions and falsehoods, if not carried out with the utmost care and attention, as prescribed. In this case, however, these...

[*Latin ed. p. 460*]

PARISIAN. OR AURELIAN. Investigations were utterly disregarded. And indeed, according to the Instruction issued by the Sacred Congregation, August 22, 1840, the examination of a woman's body must be performed by at least three midwives, or by at least two doctors previously instructed. But Mary was examined only by two doctors. And the defender laments that the Parisian court does not observe the instructions given, which are sanctioned for very serious reasons. Moreover, it appears that not two, but only one witness was present, because it is the custom of the

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Parisians that experts complete the task together. This is also prohibited in the aforementioned Instruction: "The examination of the body must be carried out separately by each individual." And in truth, the doctors were mistaken when they reported that Mary was intact, because she, having completed nine years of marriage, wrote to her husband: "One day, even in a place that I could tell you, you wounded her (Mary) with your hand, or rather, it was in this way that you had the sad courage to destroy what she held most precious, her virginity! A married woman, respected by her husband, as every honorable man should be, preserves even in motherhood an aura; you tore it from my brow. After about three months of a horrible life, of which, thank God, no one has any idea, you partially yielded, you finally accomplished what all religious and human laws ordain in marriage, but whether you are truly impotent in fatherhood (the opinion of a doctor), or whether, wounded as I was and in such an unworthy way, I can no longer be a mother, or finally, whether God punishes your fault by refusing you a son, of whom He would have been so proud...." Therefore, the accuser of the marriage, Mary, whom the Parisian witnesses declare to be intact, reveals, after nine years of marriage, at a time not suspected, that her hymen was torn and that she lost her virginity in the early days of marriage. And since Mary wrote such things about conjugal matters, she was properly instructed by her mother and by her...

[*Latin ed. p. 461*]

PARISIAN, OR AURELIAN, 461. The dissolution was not a result of a breach that time could have erased, for the mother testified that her daughter, Mary, had said to her: "My dear mother, I do not know if this is what is necessary to have children, but I can no longer endure what I suffer; I can no longer sit down." But the consummation of the marriage is also clearly demonstrated by a careful consideration of the things that Mary wrote to her husband, eight years after the marriage. If the marriage had been unconsummated at that time due to the husband's ineptitude, Mary would certainly have mentioned this in her writings, or at least most likely would have done so; but her writings seem to indicate only the origin of the discord with her husband. Mary complains of two things in her writings, says the defender: of the moral and physical evils inflicted upon her by her husband's unrestrained licentiousness; and of the lack of conjugal duties shown to her by Joseph's mother. Regarding the first, Mary immediately received letters from Joseph in which he confessed his guilt and approved of Mary's course of action, even admiring her magnanimity. But the situation was different with regard to Mary's second complaint. Joseph's mother did not cease to blame Mary, but, it seems, she enjoyed defaming her among the common people; so much so that on April 20, 1879, Mary considered it appropriate to defend herself in a letter and to attribute her barrenness to the fault of her husband. Now, the advocate proceeds to the examination of

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the judicial witnesses, and he finds, above all, some things that seem to him not to be in accordance with what Mary wrote at a time when there was no suspicion. In particular, he points to the witness Argant, Mary's confessor. Furthermore, doubts arise for the advocate regarding the following words of the Vicar General Desnoyers, who said: "After several years, I learned from the wife whom I was guiding, and who gave me full permission to speak, that the marriage had not been consummated; she repeated this to me several times." If Francis speaks truthfully, he did not hear of the unconsummation of the marriage in the very beginning of their conjugal life, but "after several years": and he heard this from Mary, but not in confession. For Mary, the other...

[*Latin ed. p. 462*]

462. PARISIEN, or AURELIAN, confessor of Argan, claims to have held this office since the year 1874. However, if, outside of confession and at a suspicious time, "after several years," he heard from Mary about the lack of consummation of the marriage, it is unclear how he inserts the words "that I was directing and who gave me full permission to speak." Thus far, the aforementioned defender attempts to strengthen his claims, referring to the protestation of Joseph, the clerk of the Parisian Curia, a document with which he endeavored to prove his power, stating repeatedly that the marriage with Mary had been consummated. Finally, the asserted lack of consummation of the marriage is refuted by the testimony of the tutor, and also from what Gabriela Dandier, Mary's friend and confidante, affirms: "I only learned very late that the marriage had not been consummated. About a year ago, I learned in a positive way that the marriage had not been consummated." It is impossible to believe that Mary, for twelve years, lived with her husband, and for the same number of years lived separated from her husband, and yet that the lack of consummation of the marriage could have been so well concealed from Gabriela Dandier, Mary's most familiar and intimate friend. Furthermore, Euphrasia Bachelier, who served Mary throughout the entire time that the conjugal cohabitation lasted as a chambermaid, never suspected anything, but only when Mary intended to act before the secular tribunal did she first hear about the lack of consummation of the marriage from Mary herself. With these things noted, it is necessary to address the question: Whether a consul can, without permission, appeal to the Most Holy Congregation regarding a dispensation from a valid but unconsummated marriage in this case.

RESOLUTION. The Sacred Congregation, after discussing the matter on July 25, 1896, decided to respond: Affirmative, forbidding the husband from entering into other marriages, without the consent of the Holy Con-

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gregation.

[*Latin ed. p. 463*]

463 MONACO. DISTRIBUTION OF FUNDS. September 12, 1896. Through summary petitions. SUMMARY OF THE CASE. In the Cathedral Church of Monaco, which attained the dignity of a cathedral in 1887, the Chapter statutes grant each canon two continuous months of vacation; and furthermore, allow the enjoyment of a third month through interspersed absences; but always with the loss of distributions; as stated in the letter of Article in Chapter II, Section II of the Statutes: "A space of three months may be granted to each canon annually, for the purpose of relaxation, with the loss of distributions; however, due to the small number of canons, only two months of continuous absence will be permitted, and the third month may be enjoyed through interspersed absences." The priest Ribour, a canon of this Cathedral, customarily spends three continuous months of vacation outside the Diocese, of which one he dedicates to consulting, in Switzerland, regarding his health through thermal waters, and the others he devotes to pilgrimages through various regions of Europe, with the intention, as he states, both of regaining his health and of relaxing his mind. Therefore, the canon argues that he does not lose the distributions because he takes vacations, especially not for the purpose of relaxation, but due to reasons of health. However, the canon argues that infirmity is a legitimate cause for absence, and this is not unknown. But others of the Chapter understand the matter differently. They argue that the prescription of the cited article applies to Canon Ribour, first, because only one month serves to restore his health, at most; while the other two are for *solatium*; and second, because Canon Law does not grant the benefit of receiving distributions to one absent due to infirmity, unless he is diligent and accustomed to regular service in the choir. However, the Chapter insists that Canon Ribour customarily takes three summer months free from service in the choir, during which time he travels in distant regions.

[*Latin ed. p. 464*]

464. MENOECEN. Wherefore, the Chapter, on the 16th of November, 1892, issued a decree whereby it did not recognize as legitimate the cause for the absence of Canon Ribour, in order to obtain distributions, and it commanded him to pay for the time of the vacation months. For there was not established a mass of distributions, but rather, for each absence, something is paid, which increases for the others. However, the Chapter's decree did not dissuade Canon Ribour, who, reluctantly, continued to enjoy the time of vacation in this manner. The Chapter appealed to the Bishop for the confirmation of its decree, and the Bishop subsequently issued a decree: "The Venerable Chapter of the Cathedral Church has informed Us that, on the 16th of November of the year 1892, it deliberated on the matter

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of whether daily distributions should be granted to those Canons who, having been accustomed to taking vacations each year during the same months, and for the duration of those vacations, wished to spend a certain amount of time in Bagnols or at Kis-Kajan, under the pretext of preserving their health, because, in addition to the cause of absence from the choir, there would not be a necessity for preserving their health, but rather a desire to enjoy the vacations; but when Canon Charles Ribour opposed this resolution or deliberation, and steadfastly refused to submit to the loss of distributions for the days he spent at Kis-Kajan during the last two years of his vacations, the Venerable Chapter considered it necessary to submit the controversy to the judgment of Our authority, according to the prescription of its own chapter statutes, Chapter X, § III. Therefore, they requested Us to deign to declare whether we considered this aforementioned chapter deliberation to be worthy of approval, and, in the affirmative, to declare and decree that the aforementioned Canon Charles Ribour should be subject to the loss of distributions for the days he spent at Kis-Kajan during the last two years of his vacations." "We, therefore, sought to remove the causes of contention and dissension from Our Cathedral Church Chapter..."

[*Latin ed. p. 465*]

465 MONOECEN. desiring to diligently serve the Choir, and to promote fuller observance of the Statutes and Constitutions of the same Chapter; having considered the petition presented to Us as above, and the aforementioned deliberation of the Chapter, having weighed the reasons presented by the Chapter, and having duly summoned and heard the Canon, Charles Ribour; considering that the Canons, who are accustomed to taking vacations in certain months each year, would have taken those same vacations at the same time, even without the necessity of going to the thermal springs; considering that the practice established by the Sacred Congregation of Councils in similar cases, by the late Pope Benedict XIV in his *Institution*, 107, and by other authors, has been consistently maintained; We judge that the aforementioned deliberation should be approved, as We fully approve it by the tenor of the present document; and therefore We decree that all the Canons of Our Cathedral Church are and shall be bound by it.

"Furthermore, the Canon, Charles Ribour, who opposed the aforementioned deliberation, is found to be in error, not only in the matters discussed therein, for it is evident that he has been accustomed each year during the months of July, August, and September to go outside the Diocese and reside there, but especially in the last two years he has taken vacations outside the Diocese, without Our permission, in violation of the prescription of the Chapter Statutes, Chapter II, §§ VI and VIII, when he argues the necessity of going to the thermal springs in order to avoid the penalty of the loss of distributions: for the Sacred Congregation of Councils has defined, and especially in Ripana on March 24, 1657, that a Canon absent from his

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Church, for any reason, even if just and legitimate, should not receive the daily distributions, unless he has obtained express permission from the diocesan Bishop, even if the Chapter wished to admit the absent Canon. Moreover, he would be subject to the penalties prescribed by the Council of Trent, Chapter 12, Session 24, concerning reform, and mentioned in the aforementioned Chapter Statutes, because he has been absent for several days beyond three months, from which penalties he is now exempt."

[*Latin ed. p. 466*]

466. Concerning the matter of MONOEGEN, we have judged that it ought to be avoided, so that he may conform himself to the same Capitular Statutes in the future, and we trust that he will observe them exactly, as others do. Even if some doubt might remain concerning the legitimacy and justice of the deliberation of the Chapter of November 16, 1892, nevertheless we declare that Canon Charles Ribour has undoubtedly been subject to the loss of distributions for all the days during which he was absent from the choral service during the last two years; and we decree that he is obligated to deposit with the Treasurer of the Chapter the sum corresponding to the distributions lost, according to the calculation made by the same Treasurer. "To fulfill this obligation, we grant him a period of thirty days from the notification of this decree; failing which, in the absence of other means of coercion, he will incur the penalty of suspension from the celebration of the Mass for the aforementioned period. Furthermore, under the same penalty, we order Canon Charles Ribour not to take vacations outside our Diocese and the territory of the neighboring Diocese of Nice without our express permission, and for more than two consecutive months, as prescribed in the Capitular Constitutions, Chapter II, § VI; we decree that this prescription must remain in full force and be observed by all. Given at Monoeci from our Episcopal residence this day, March 28th of the year one thousand eight hundred and ninety-four." The Canon obeyed this decree, but in the year 1895, yielding to his death, he spent three summer months outside the Diocese, without seeking the Bishop's permission, and nevertheless refused to lose his daily distributions. Therefore, the Bishop appealed to the Sacred Congregation of Clergy, requesting whether his decree should be maintained, and whether it should be enforced against the Canon concerning the year that had passed, and in the future.

[*Latin ed. p. 467*]

MONACO. 467 A Synopsis of the Dispute FAVORABLE TO CANON RIBOUR. Canon Ribour, in his defense, states that he was invited by the Bishop and the Prince of Monaco to accept a canonry when the Cathedral Church was being established, and that he was reluctant due to his poor health. He says that he decided to accept the position after learning that the

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Council of Trent granted each canon three months of vacation. Therefore, he claims that he protested against the capitular statutes that restricted this generous concession of the Council of Trent. The Canon reports that, after the year 1887, during the summer, he became seriously ill and went to the thermal baths of *ad aquas*, prolonging his absence from the church benefits for more than three months, and that he continued in this manner for the following three years, missing his daily distributions. Then, in the year 1892, the Chapter issued a decree in which it ordered "that no distributions be given to those canons who, having been accustomed to taking vacations each year, during the same months, would wish to spend some time at the baths or at the thermal waters, during those same vacations, even on the occasion or pretext of protecting their health." This decree was aimed at preventing Canon Ribour from continuing his usual practice of taking vacations and receiving distributions. Therefore, he vehemently protested, invoking reasons of Canon Law and equity. Furthermore, he states that he is already 70 years old, and that he had previously served as a military chaplain in the Gallic class for a long time, and that, subsequently, he had been subjected to arduous labors. Two doctors testify today that he suffers from a joint disease (commonly known as gout), for which the thermal baths were prescribed as necessary for maintaining his health. Undeniable arguments of law support this Canon. For Boniface VIII, in chapter 6 of the decree *Consuetudinem*, after generally stating, concerning non-resident clergy, that...

[*Latin ed. p. 468*]

468 MONOECEN. absent ones are excused; he immediately adds: "Except for those whom infirmity, or a just and reasonable bodily necessity, or evident benefit to the Church, would excuse." This Council of Trent renewed in chapter 13, session 24, concerning reforms. Therefore, in Nucerina on February 17, 1838, it was noted: "If, according to civil law, infirmity always excuses from office and duty, all the more so will it excuse according to canon law, which proceeds from the Church, who has always striven to comfort the misfortunes of her children with the most tender maternal care." And the Sacred Congregation of Rites ordered on April 15, 1511: "Those who are absent from the service of the choir due to infirmity or another cause, should receive the daily distributions of their canonry, as if they were present at the stated hours; they should also receive the increase in distributions, which are lost to those who were not present at the divine services." From book 11 of Decretals, page 98 verso; in Benedict XIV, Institutes, 107, § 4.

WHAT IS OPPOSED TO CANONICAL RIBOUR. On the contrary, it must be noted that Benedict XIV, in the aforementioned Institutes, § 47, states: "It is not sufficient if canons who are accustomed to being absent from the choir while they are healthy. In that case, the absence is not at-

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tributed to illness, but to a will, by which they are considered to be unwilling to serve the Church." Therefore, the Sacred Congregation of Rites, in a decree in Mantuana, book of Decretals, 13, page 197, in the aforementioned Benedict XIV, Institutes, on February 6, 1627, decreed: "Daily distributions are to be given to the sick canon only if he was accustomed to otherwise serve the Church, and the justification for this is left to the conscience of the Bishop." And the Sacred Rota, in a decision in Hispalensis, distributions, May 2, 1603, elegantly expresses the reason for this: "Distributions are due to canons who, while they were healthy, were accustomed to attend the divine offices; otherwise, they do not receive the daily distributions; because illness is not a reason for not residing in those who, even when healthy, would not have resided there." However, it is alleged by the Capitulars, that it is proven from the books of records that Canon Ribour, from the very first year of his possession of his canonry, until the present time, has taken a vacation of three months each year, contrary to the precept of the Capitular statutes; and furthermore, he...

[*Latin ed. p. 469*]

MONOEGEN. 469: To transfer oneself outside the diocese without the permission of the Bishop is forbidden by the chapter statute. For in Chapter II, § 8, it is stipulated: "That anyone may enjoy a continuous absence of two months outside the diocese, he must obtain permission from the Bishop, who shall not grant it unless two canons are absent at the same time; etc." The Bishop himself, in his decree, cites the Sacred Congregation of Councils (S. C. C.) regarding the necessity of obtaining the Bishop's permission; and the following declarations more clearly explain this point of common law. The Sacred Congregation of Councils, in the case of *ladren*, on May 9th of the year 1626, decreed: "The Sacred Congregation, although it has declared that no permission is required for canons to be absent during the months permitted by the Council; nevertheless, it has judged that this declaration does not apply when canons wish to be absent outside the diocese; and therefore, in this case, the permission of the Bishop must be obtained. Moreover, Bishops should not deny it without a reasonable cause." For previously, the Sacred Congregation of Councils, in the case of *Abulen.* in the year 1581, in *lib. Decret.* 14, p. 4.67, apud Bened. XIV, I. c., responded to the question: "Can Dignitaries, Canons, Portionaries, Singers, or other officials be absent from the service of the Church without the permission of the Bishop?" The Sacred Congregation, etc., judged: "It is not necessary to require the permission of the Bishop when Dignitaries, Canons, or Portionaries wish to be absent during the time permitted to them by the Council; however, not all may be absent at the same time, lest the Church be deprived of its due service. The extent of the number who may be absent at the same time is left to the discretion of the Bishop and the Chapter." These decrees, which certainly pertain closely to the discipline of choral service,

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are of great importance. Having considered these matters, the question was raised as to how the prayers should be dismissed. RESOLUTION: The Sacred Congregation of Councils, reviewed on September 1, 1896, judged that Canon Ribour should be held responsible for the payments in this case.

[*Latin ed. p. 470*]

470 TURIN. NULLITY OF MARRIAGE. July 12, 1890, and May 2, 1896. Session 24, chapter 1, concerning impediments to marriage. On August 8, 1863, in Augsburg, in the parish church of the Great Mother of God, Francisca T. . . . and Agatocles B. . . . were to be married. This man was a merchant and had his domicile and a flourishing business in Nice, and he had arrived in Augsburg, Turin, only a few days before, for the purpose of contracting the marriage. Francisca, on the other hand, daughter of the most celebrated singer Anthony T. . . ., approximately forty days prior to this, had come from Nice, where she had resided, to Augsburg, Turin, together with her father, mother, and younger sister, and, with the kind permission of Count Nigra, had established her residence in the suburban area commonly called "delia Regina," in the district of the parish of the Great Mother of God. Now, the validity of this marriage is challenged due to the vice of clandestinity: for Francisca contends that her father at that time had his domicile in Paris, considering Nice as his domicile, while Augsburg, Turin, was merely a temporary residence for cultivation, and therefore he was entirely outside the parish of the Great Mother of God; the same is to be said of the man. Furthermore, the parish priest of the Great Mother of God had not been delegated in any way, but was led by error or ignorance, and therefore acted in a manner proper to neither parish priest, since neither of them was the parish priest. The following is how it happened that these controversial nuptials were celebrated in Turin: In the middle of July, while the family T was residing in the suburban area of Turin, it is said that Agatocles B. . . . wrote to Francisca, whom he had previously known in Nice, requesting her hand in marriage: Francisca and her parents acted with great haste in response to this request, and immediately compelled the man to come to Turin to celebrate the marriage; he agreed without delay, and thus the matter was quickly concluded. SUMMARY OF THE FACTS.

[*Latin ed. p. 471*]

TURIN. 471 When the matter of concealment is raised, it is best to refer, from the very beginning, to what is contained in authentic documents, with regard to this point. Therefore, in the first place, in the marriage agreement, which was made before the Gallic consul, two days before the wedding, on August 6, 1863, in Turin, the Notary wrote the following: "Present were Mr. Agatocles B, a merchant, residing in Nice... and Miss Fannv T, under the authority and assistance of her father and mother, who were present,

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and with whom she had resided in Paris until now." Conversely, in the marriage register of the Parish of the Great Mother of God, the following is written: "In the year of Our Lord 1863, on the 8th of the month of August, in the aforementioned parish, after a publication in the said parish, with dispensation from the others, the marriage was celebrated, etc., between Mr. Agatocles B..., aged 40 years, born in Nice Maritime, residing in Turin, Borgo Po, and Miss Francesca T, aged 23 years, born in Paris, residing in Turin, Borgo Po, in the Parish of the Great Mother of God, daughter of the living Knight Antonio, residing in Turin, Borgo Po, etc." Whatever the case, after the wedding, the spouses immediately departed for Turin, and after a short journey, they returned to Nice. However, with discordant minds, education, and character, as long as the marriage lasted, each was perpetually estranged from the other. Moreover, the marriage proved to be barren; and the husband, as is asserted, soon, without shame, indeed with ostentation, began to seek out other women. Consequently, the common life had to be broken, and Francesca returned to her father, with whom she lived until her death, that is, until the year 1876. Afterwards, in the year 1884, she obtained from the civil court a separation of persons and property, from which time Francesca resided in Nice among the nuns of the Most Holy Sacrament, until on December 7, 1887, she obtained a civil divorce. Having obtained this, in July of the year 1888, she entered into a new civil marriage. In view of these circumstances, I am very eager to offer counsel to one's conscience.

[*Latin ed. p. 472*]

472 TURIN. In order to expedite matters, and so that the process for declaring the nullity of her marriage might be entrusted to the Ordinary of Nice, who, as the proper judge in the matter, would hear the case, while reserving to the Sacred Congregation the power to render judgment even at the first instance, lest greater cause for murmurs and criticism be given to Nice, the prayers were admitted. The process was conducted partly in Nice, partly in Turin, and partly in Paris; and finally, the Sacred Congregation examined the case, under the formula of doubt: "Whether it is established that there is a nullity in the marriage in this case." It judged that the answer should be: "Let the acts be extended and completed according to the instructions to be given by the defender of the marriage office." Immediately in the same month, the Reverend Fathers gave instructions to the Courts of Paris, Nice, and Turin, which it is fitting to report. For the Court of Paris, the following instruction was written: "Francisca T, residing in Nice, declares that the marriage which she contracted in the year 1863, on the 8th of August, with Agathocles B, a citizen of Nice, is infected with the vice of clandestine marriage, especially because her father, Anthony T, devoted to the theater, had long since established a residence in Paris, having purchased a house on rue Tronchet, number 9, and having acquired

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the estate of Brimborion since the year 1849." "However, Francisca does not deny that she left Paris with her parents and sister in the year 1859, nor that after that date, none of them ever set foot in Paris again, when the aforementioned marriage was celebrated. Furthermore, it is established that, at that time, the estate of Brimborion, as well as the house in Paris, were not held by the family of T, but by others. Indeed, from the year 1859, Anthony T put them up for sale, and their sale may have taken place before the celebration of the aforementioned marriage." "Therefore, the Fathers of the Sacred Congregation, before deciding in favor of or against Francisca, believe that the time of the sale of the aforementioned estate and house must be determined. With regard to this matter, it must be carefully noted the time when Anthony T sold them."

[*Latin ed. p. 473*]

TURIN. 473. It is necessary to ascertain the time at which these [properties] were delivered to the buyer, as well as whether the aforementioned houses, having been adorned, furnished, and prepared for sale, were continuously held by him until their sale; or, rather, whether, after the year 1859, he rented, especially, a house in Paris. In any event, it will not be irrelevant to inquire whether any record of this marriage exists in this Archdiocesan Curia, or in the parish archive of St. Lo (N. I), or in the Parish and Curia to which the Villa Brimborion belongs, or whether any permission was granted by the parish priest of Turin for this marriage. Regarding the Curia of Nice, the instruction is: "In order to demonstrate, as best as possible, whether Anthony T, together with his family, spent each year from 1859 in Nice, whether he rented a house, adorned and furnished it, or rather, as they say, lived in it, or whether he paid the aforementioned house or lodging, especially during the summer months, including the year 1863; and whether, in August 1863, when Francisca T married Agatocle B, Anthony T retained the aforementioned house or lodging in Nice." Finally, the instruction given to the Curia of Turin is as follows: "Francisca asserts that she and her parents stayed in Turin for a month and several days during that period of residence: - 'We were lodged in the royal palace called Villa della Regina, with Mr. the Count Nigra, Minister of the King's Household, who graciously offered us hospitality at the request of the family of Mr. Ferri, one of my father's best friends.' - In view of this, let the Archbishop not hesitate to investigate the reasons by which the parish priest and Prelate of that time joined Francisca T and Agatocle B in marriage." A Synopsis of the DEFENSE OF THE WOMAN. Before proceeding directly to demonstrate her claim, Francisca's defender believes it useful to recall the canonical provisions regarding the celebration of marriage.

[*Latin ed. p. 474*]

474 TAURINEN. Namely, the Council of Trent in Session XXIV, Chapter

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I, concerning the reform of marriage, established that a marriage is valid even if clandestine, provided that it is celebrated in the presence of two or three witnesses, before the proper parish priest of either of the spouses; or by delegation from the proper parish priest or ordinary. The proper parish priest is understood not to be the one of the place of origin, but of the true and actual domicile, or even a quasi-domicile; only those who lack a domicile or quasi-domicile can, according to the law of vagants, celebrate marriages wherever they may be: but certain conditions are required, Council of Trent, Session XXIV, chapter 7, concerning the reform of marriage. Furthermore, the advocate argues that domicile is "where one intends to reside permanently," or more clearly, "where one has established the bulk of one's property and fortune, from which one would not depart unless compelled, and from which, when one departs as a traveler, one seems to have already left," L. 7, Code of Canon Law. According to canon law, the place of domicile is the parish. Both in Justinian's law and in canon law, two domiciles can be held simultaneously. Sánchez De matrim. III, 24, 3, St. Alphonsus VI, 1080. Regarding the quasi-domicile, it is the place where one resides with the intention of remaining for the greater part of the year, De Angelis Praelectiones iuris Can. Lib. IV, tit. 3, de Clandestina despons., n. 4. Finally, vagants are those who wander from place to place, without having a fixed abode, and without the intention of remaining in the same place for a long time. With these premises, the advocate is confident that he can easily demonstrate that the marriage between Agathocles and Francisca is invalid due to the impediment of clandestine marriage. He demonstrates that the parish priest who celebrated the marriage was not the proper priest of the man; for that priest always resided in Nicaea, and came to Augsburg, only for the purpose of celebrating the marriage, as appears from the documents. Furthermore, the advocate argues that the parish priest of the Most Holy Mother of God in Augsburg was not the proper priest of Francisca, based on three grounds. Firstly, she, as a daughter, followed the domicile of her father.

[*Latin ed. p. 475*]

TAURINEN. In the year 1863, there were 475 parishes in Lutetiae, the city of the Parisii, similar to the parish of Nice, and no delegation from either parish intervened: which three arguments principally demonstrate. It is evident from the supplementary records that Anthony T, having married Francisca in the year 1863, still had a domicile in Paris, as confirmed by the lawyer. Indeed, it is established that I. Anthony had established a family in Paris from the year 1832, and only in the year 1859, due to circumstances of a temporary nature, did he leave Paris and intend to sell his properties, but the sale was completed, as regards the estate of Brimborion in August of the year 1865, and as regards the house in Paris on the street Tronchet in October of the same year; and 2°. That Anthony had preserved the afore-

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mentioned estate and house, maintaining them for himself and his family, and never rented them out. These two points are primarily derived from the testimonies of Aloysius Jacquet and Joanna Grardoni, the actress sister. Aloysius Jacquet, who from the year 1857 until September 17th of the year 1863 was part of Anthony T's household, and then went to serve Joanna, the daughter. Joanna herself, the sister, states, and the advocate adds more precisely: "Indeed, she affirms that her father left Nice in the year 1853, 'but then he had no intention of leaving Paris'," and she recounts that from the year 1859 to 1864, "We never ceased to have a domicile in Paris and in Sèvres, where we would return to spend some time, while we were in Nice only as residents." It is particularly important to note Joanna's words: "I was married in 1864 in Sèvres, on my father's property," for in fact, in the parish register of marriages, it is stated that Joanna, and therefore also her father, resided in the urban estate of Brimborion. Therefore, if anyone were to deny that Anthony maintained a domicile in Paris in the year 1863, it must be said that the marriage of Joanna was celebrated clandestinely in the parish, to which the estate of Brimborion belonged in the year 1864; which, however, was considered a valid marriage by the priest and the witnesses.

[*Latin ed. p. 476*]

476 TAURINEN. The patron of the actress subsequently refuted the arguments presented by the defender in the initial proposition of the cause, concerning the point at issue in the present controversy. It cannot be asserted that the marriage of Francisca was valid, because it was celebrated according to the law of vagrants, and her father, who practiced the art of music, had no fixed domicile. This, he argued, would only be a matter of injustice to Anthony; as has already been stated, he established a family in Paris from the year 1832, and he resided with his family and, whenever he was free from travels, and it is evident that three daughters were born to him in Paris at the aforementioned domicile. Furthermore, it is clear that Anthony purchased a house in Paris in the year 1839, and a townhouse in the year 1849, and that he lived in them with his family, especially after he withdrew from the theaters, until the year 1859. Although T departed from Paris in the year 1859 and went to Nice for the sake of his daughter Francisca's health, it must be understood that he did not abandon the intention of returning; firstly, because he retained the house and the townhouse for a long time, without selling them, and in the meantime, he kept them maintained and prepared for himself and his family, and never rented them out; secondly, because after the sale, he rented another house and townhouse for habitation; and thirdly, because he actually returned several times to the Parisian domicile with the intention of remaining there, namely in the years 1861, 1862, 1864, 1865, 1866, and from 1867 to 1871. In the same manner, the patron continues, the other objection, derived from the long residence

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of the family of T in the villa Brimborion, is to be dismissed; for, as he has already demonstrated, it is possible to have two domiciles: one which Anthony had in Paris, in the house on the Tronchet street, and another in the villa Brimborion. Nor should it be considered significant that Anthony sold the house and the townhouse from the year 1859; for the intention of selling does not, at least by itself, indicate an intention of abandoning the domicile. At the very least, it is required that the sale actually be completed and transferred, which occurred only in the year 1865. Finally, he argues, it is a futile effort to assert that Anthony's returns to Paris after the year 1859 were nothing more than brief appearances. These returns are considered to be indications of a true domicile.

[*Latin ed. p. 477*]

TURIN. In 477, the plaintiff argues that the defendant habitually resided in his own home, and indeed, that he conducted family business there, while, on the contrary, he left Paris for temporary reasons and would constantly return. Furthermore, the defendant's counsel presents evidence of a quasi-domicile in Nice, based on new documents obtained with great diligence from the Ordinary of Nice. Indeed, all the newly examined witnesses assert that Anthony T. had a domicile, or at least a quasi-domicile, in Nice from the year 1859. Moreover, the plaintiff's counsel states that Henry Dalgouthe, editor of the newspaper *Les échos de Nice*, affirms that he is certain that "Mr. T spent the winter season in Nice, from 1859, until 1863 inclusive," and he presents his own records from that time as proof of this. Finally, Raymond Gautier states, "Mr. T regularly spent the seasons in Nice, without fail, and always resided in the same apartments on Quai Masseria 3, Nice." The actress and Agatocles themselves entirely agree with this. Furthermore, the counsel observes that there are many indications from which it can be gathered that Anthony always intended to return to Nice during the winter season. For example, he would leave behind, each year, trunks filled with winter clothing, a musical library, as one witness affirms. Nor, according to the counsel, does it present a serious difficulty that Anthony left Nice, as he was accustomed to do, in June of 1863, and visited Genoa, then spent two months in Augusta Taurinorum, being generously received in the royal villa, and afterwards resided in Florencia until May of 1864; at the end of May, he returned to Paris, and visited Nice again in the years 1866 and 1867, and only in the year 1870 did he establish his permanent residence again in Nice. Indeed, a quasi-domicile of five years (from 1859 to 1863) is not so easily abandoned. Anthony spent the winter in Nice; therefore, at least the winter of December 1863 should have been expected, in order to say that Anthony would not return to his quasi-domicile in Nice;

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but Anthony, as is known, resided in Florencia for nine months, as...

[*Latin ed. p. 478*]

478 TURIN. He would experience that heaven, if he had a home there; hence, he never returned there, but returned to Paris and then went to Nice, where he always kept some belongings and a musical library. Furthermore, if any doubt still remained concerning this matter, it is definitively removed, he says, by the gravest testimony of the Curia, which affirms that it is well known that T established his quasi-domicile in Nice from the year 1859, and that, except for a brief trip to Paris, he remained there until the year 1876, when he died. Proceeding to the third part of the demonstration, the advocate argues that it is clear that no delegation was given by the parish priest of Paris, nor by the parish priest of Nice, in the marriage celebrated in Augsburg between Francisca and Agathocles by the parish priest of the great church of the Mother of God, who was not the proper parish priest of either of the spouses. For, when the Sacred Congregation inquired as to why the parish priest and the prelate of that time had joined Francisca and Agathocles in marriage, the Most Reverend Archbishop gave this response: "At that time, the parish priest and the general vicarius capitularius went to the marriage, believing that the contracting parties had their domicile in Turin." From this, it is clear, according to the advocate, that the parish priest acted as the proper parish priest in the celebration of this marriage, and this itself excludes any possibility of a delegation having been given by the parish priests of the domicile or of Paris, or of the villa Brimborion, or of the quasi-domicile of Nice. Finally, he says, it cannot seriously be objected that Francisca had her domicile in Augsburg, based on the fact of her having resided there for approximately two months, and especially because, in the very act of celebrating the marriage, the spouses and witnesses affirmed that they had their domicile in Turin. Indeed, the principle of canon law is that neither a domicile nor a quasi-domicile is acquired if one resides somewhere for the cause of rustication; thus, Schmalzgrueber in tit. De clandestina despons., § 148, Cosci De separationibus, lib. 1, cap. 14, n. 39, Tropper De imped. matr., § 583, Bened. XIV Inst. 33, n. 7, and others.

[*Latin ed. p. 479*]

TURIN. 479. And therefore, from the entire series of events, it is clear that Anthony did not wish to acquire a domicile, nor a quasi-domicile in Augsburg, having resided there for two months, especially considering the celebration of the marriage, and having been received as a guest in a royal villa with the expressed intention, in words, of leaving as soon as possible, in order to go to Florence. Therefore, in no way does the hypothesis of Benedict XIV in *Constitutiones Paucis* from this point onward apply, which teaches that a stay of one month establishes a presumption of domicile;

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for in our case, the presumption must yield to the truth. Furthermore, the spouses and witnesses, the advocate concludes, could not, due to their lack of knowledge of canon law, suspect that the absence of a domicile could invalidate the marriage, and they affirmed that they would not create a supposed domicile in order to avoid obstacles to the celebration.

OBSERVATIONS OF THE DEFENDER OF THE VALIDITY OF THE BOND.

On the other hand, the defender of the validity of the bond argued that new investigations carried out by the Parisian and Nice courts demonstrate that Francisca, at the time of her marriage, possessed neither a domicile nor a quasi-domicile in Paris, nor in the villa of Brimborion, nor in Nice. Not in the villa of Brimborion, because Francisca never had a domicile there. Indeed, according to the advocate, Anthony T. had a house within the city, and the villa in the suburb was merely a rural dwelling. However, he continues, nothing is more established in law than that no one acquires a proper parish for the purpose of entering into marriage from a stay in a rural dwelling, as can be seen in Benedict XIV, footnote 33, number 7: "The Sacred Congregation of Councils... adhering to previously made declarations, responded that a rural parish priest is not a proper and true parish priest when one goes to the countryside for the purpose of recreation or for rural affairs; and therefore, a marriage cannot be validly celebrated before such a parish priest." And later, the same Pontiff cites several resolutions of the Holy Congregation confirming the same. Furthermore, the defender continues, nothing supports the claim, as the other party's advocate suggests, that the fact of the celebration of the marriage...

[*Latin ed. p. 480*]

480. TAURINEN. The sister of Joanna, in the year 1864, was received into the parish of St. Romain de Sèvres, within the boundaries of which is located the villa Brimborion. This marriage not only demonstrates that Anthony T... never had another residence in the aforementioned villa, but also proves that, at the time of the marriage of the daughter Joanna, he had long since lost his residence at 9, Via Tronchet. Furthermore, he states that the parish priest of the town of St. Romain de Sèvres considered himself to be Joanna's parish priest in the year 1864, because at that time Anthony was not residing there for recreation, but because he had no other home. Surely, no one would dare to suggest that the rector of that parish did not know that a rural parish priest is not the proper and true parish priest when one goes to the countryside for recreation. However, the defender of the sacrament is confident in the clarity of the facts presented to demonstrate his assertion; for it is proven that Anthony left the theaters in the year 1854; and, due to subsequently diminished revenues, his prosperous

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fortune declined into poverty: therefore, in order to provide for himself and his family, he deemed it necessary to adopt a more modest lifestyle, and he decided to sell the house at 9, Via Tronchet, as well as the villa Brimborion; finally, Anthony returned to Paris in the year 1864 and established himself in the villa Brimborion for a reason previously unforeseen. And indeed, in the year 1859, he departed from Paris with his wife and daughters, with no intention of returning, and he sold the aforementioned house and villa. All of these things, he says, are evident from old and new records. He writes to Francisca, the physician, on October 16, 1889: "If the expenses of Sèvres were supported by the generous income of your dear father until the year 1855, when he left the theater, this sumptuous residence had become too expensive for the former artist, the father of a family who still had daughters to provide for, and sons to establish! And that is why the excellent man saw the necessity of curbing his lifestyle; and it was then that you all four went to Nice, father and mother, you and your sister Jeannette. In this situation, buyers were sought for both properties of Brim-".

[*Latin ed. p. 481*]

TURIN. 481, "and from Paris." To this, James of Briez and Julius Alary add their testimony. These testimonies, according to the defender, clearly demonstrate that the aforementioned rural and urban properties were sold at that very time when T left Paris. This is shown by the fact that Anthony went to Paris with no intention of returning. Furthermore, he states that, since buyers were not readily available, the landlords who were present readily rented out an urban house located at 9, Rue Tronchet. This is not only derived from the letters given by Anthony to his son, Salvatore, on April 21, 1862, in which he says: "I offer my compliments to the house on Rue Tronchet 9 for its wise conduct"; but it is also confirmed by Aloysius Jacquet, who, after being questioned by the Parisian judge, states: "Brimborion was sold to a Turk, and the building on Rue Tronchet was rented to a tenant of the house, Mr. Leemans." The aforementioned Jacquet declares that his statement is of great importance, not only because he is very knowledgeable about the matter, but even more so because he himself is a staunch supporter of the Franciscans. This witness testifies: "There was never any attempt to rent out Brimborion, nor the apartment on Rue Tronchet." Meanwhile, Anthony wrote to his son about Brimborion on January 30, 1862: "If our estate remains free, as it seems, I hope you will spend the pleasant season there." And in 1863, on February 28, he wrote again to his son: "As for the estate, I will tell you that I am willing to do what you think best, both for the sale and for the rental." Nor is the defender moved by the testimony of Gustave Gatine, who wrote on October 18, 1867: "Mr. Antonio T..., residing in Paris at 9, Rue Tronchet, appeared... and by these presents, he hereby appoints Mr. Salvatore T as his general and special agent." For this concerns the chosen domicile; which has nothing in common with

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the domicile of habitation. Having considered these matters concerning the Parisian domicile, the plaintiff proceeds to the question of the quasi-domicile in Nice. Acts, Volume XXIX, page 344.

[*Latin ed. p. 482*]

482 TURIN. And it is alleged that Anthony did not have Nice as his residence during the time of the marriage to Francisca. Firstly, it is established that T never owned a house in Nice, but rather rented a house furnished by a lessor; and that he never rented for a year, but for six months, specifically during the winter season, as reported by Evelina Flores and by Francisca herself. Furthermore, the advocate contends that Anthony left Nice in June of the year 1863, without the intention of returning there to spend the winter. Indeed, Francisca, when asked: "When your father went to Turin in 1863, did he intend to establish a residence in that city, at least for a certain period of the year?" replied: "No, we were coming from Genoa, and we stopped in Turin as we sometimes stopped in Faenza, in Milan, in order to proceed from there to Florence, where my father spent the winter of 1863-64." And in Florence, the advocate concludes, Anthony would have remained permanently, unless he had first returned to Paris to sell property, and was subsequently compelled by domestic difficulties to lead a more modest life. Indeed, he wrote to Francisca on October 21, 1863: "I am always a fanatic for Florence. Last night, the Teatro della Pergola opened with Gounod's Faust; we were in our box, which for three seasons, Autumn, Carnival, and Lent, costs us 750 francs for half of it." Having considered these points, the purpose is to resolve the doubt as to whether there is a nullity in the marriage in this case. The Sacred Congregation, after deliberation, on May 2, 1896, decided to respond: Affirmative. FROM THE PRECEDING, IT IS UNDERSTOOD: I. That an impediment arising from clandestine circumstances does not invalidate a marriage when it is established that the marriage was celebrated without witnesses, and without the proper parish priest of either of the spouses. RESOLUTION.

[*Latin ed. p. 483*]

TURIN. 483 II. Those who lack a domicile or quasi-domicile can celebrate marriage wherever they may be, according to the law of vagrants, provided that certain conditions are met. III. A domicile is considered to exist where a person resides with the intention of remaining permanently in that place, and where he has established his household, property, and fortune. IV. A quasi-domicile is considered to exist in the place where a person resides with the intention of remaining there for the greater part of the year. V. Vagrants are those who wander from place to place, without having a fixed abode, and without the intention of remaining in the same place for a long time. VI. Marriages celebrated in secret are to be considered clandestine, because the parish priest who was present and gave his blessing was not the

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proper minister for either of the spouses; nor can they be called vagrants, since each of them enjoys his own and stable domicile.

NEAPLES, MARRIAGE. On September 12, 1896. Session 24, chapter 5, concerning impediments to marriage. Sir Edward, 38 years of age, took Adelina, of approximately the same age, as his bride, celebrating the marriage according to the Tridentine rite on July 17, 1890, in Naples. The spouses experienced carnal intercourse on the very day of the marriage, but, if their statements are to be believed, the marriage was not consummated during the entire period of their cohabitation, which lasted almost a year. Edward did not fail to consult experts in the art of healing regarding his impotence with Adelina, who prescribed many remedies to him, but in vain; and yet, as he himself admits, he was able to consummate the union with other women without difficulty at the same time.

SUMMARY OF THE FACTS.

[*Latin ed. p. 484*]

484 In Naples, Adelia also states that the marriage was not consummated, but she does not doubt that all the blame lies solely with the husband's impotence for the act of coition. Whatever may be the truth regarding their assertions concerning conjugal relations, it is certainly true that mutual love quickly vanished after the marriage, and discord and quarrels arose between the spouses, which gave the main impetus to a permanent separation. After this separation, Adelia did not delay in fostering scandalous affections with the lawyer Mosca, who had previously seemed to strive to reconcile the spouses. Then, Edward, together with his wife, went to the civil court to request a separation of body and goods, and having obtained this, Adelia, at the urging of her husband, petitioned the same court for the annulment of her marriage due to the relative impotence of the husband. The Neapolitan civil court, without hesitation, and relying solely on the affirmations of the woman and other witnesses, issued a sentence of annulment of the marriage on June 28, 1894. With such a hasty sentence, Adelia immediately entered into another marriage, which they call civil, with the aforementioned lawyer, Hyppolito Mosca, in order to legitimize their union, according to the laws of the Italian kingdom. Edward, however, appealed to the Most Holy [See], earnestly supplicating that his marriage be declared null, either on the grounds of relative impotence, or at least that a dispensation be granted from the marriage, so that it would only be ratified. The Sacred Congregation responded to the Most Reverend Archbishop of Naples on November 14, 1894, instructing him to ensure that a process be carried out, "both regarding the asserted nullity, as well as the non-consummation of the aforementioned marriage,

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and the reasons for a dispensation, observing the proper form, etc." The Most Reverend Archbishop, through a delegated judge, with customary skill and expertise, conducted the process, examining several spouses and other witnesses, whether summoned by the court or by duty, as well as five men skilled in the art of medicine or surgery, who, in a judicial manner, examined Edward's body and openly expressed their accurate opinion regarding his virility.

[*Latin ed. p. 485*]

NEAPLES 485. A Synopsis: In Potenza, carnal union is a substantial condition of marriage. For it is essential in all contracts that both parties have the possibility of fulfilling the agreements they have made. When the matter of a contract is impossible, the contract itself is impossible. In marriage, carnal union is not of the essence of the conjugal contract, because there can be a valid marriage even without it; however, the power to have carnal intercourse and to procreate fertile seed is of the essence of the conjugal contract; and therefore, the party possessing this power is rightfully entitled to it, and the impotent party must provide for themselves. Therefore, supposing that Edward is impotent, a marriage begun by Edward with Adelia is not to be considered valid on the grounds of impotence. Indeed, impotence is either in coldness or in excessive heat. The first type of impotence is manifested in a weakness of powers; thus, a man cannot erect his member, nor can he introduce it into the vagina, nor can he ejaculate seed. The second is manifested by the spontaneous emission of seed outside of the vagina, without the member being erected and introduced into the woman's vagina. Both of these phenomena prevent procreation. Certainly, the debt is fulfilled by penetrating the woman's vagina and simultaneously emitting seed within it. Hence, if one of these two actions is lacking, the carnal union is not perfect and complete. Therefore, if the erection does not occur, or if seed is emitted outside of the vagina, then procreation cannot occur, and consequently, the man does not fulfill his duty, and the essential end is not achieved. It is written in the law concerning frigidity and witchcraft, § Immediately: "But if, immediately after the first or second month, she declares to the Bishop or his representative: 'I wish to become a mother, I wish to have children, and therefore I have accepted a husband.' But the man she has accepted is of a frigid nature and cannot fulfill that which she accepted him for; if this can be proven, they can be separated, if she wishes."

• THEOLOGIAN'S OPINION.

[*Latin ed. p. 486*]

486 In Naples, moreover, the act of copulation is merely the means by which the conjugal act is perfected. It is not considered a consummation

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if there is no seed deposited in the vagina. For the fulfillment of the marriage, copulation is required, through which the spouses become one flesh, according to the canon. As stated in *De frigiditate et maleficiis*, marriage contracted from the beginning is invalid if, from the beginning, that is, in the act of expressing mutual consent, there was an impediment of impotence. This is what Alexander III taught in *De frigiditate et maleficiis*, concerning the matter. "Just as a boy who cannot repay a debt is not fit for marriage, so those who are impotent are not considered fit to enter into marriage." Edward was truly impotent before entering into marriage with Adelia. He confessed that, from the first night and on repeated occasions throughout the year, he had not had a complete and perfect act of copulation with Adelia, because the erection was always absent, despite the use of medications, as confirmed unanimously by witnesses, both from the husband's side and from the wife's side; therefore, he was unfit to enter into marriage. The expertise of medical professionals in the secular forum was lacking, because Edward refused to submit to them. The woman, however, was not invited to do so. Before the conjugal union, there was no aversion of mind on the part of the woman that could have impeded the erection of the member, but rather, it occurred much later, and indeed, after repeated attempts. Both in the first instance and in subsequent attempts, the man, for ten months, barely approached the body of his spouse, and rarely emitted semen. Although he could have emitted semen, which the woman does not affirm, the copulation was nevertheless not complete and perfect, which is required for the fulfillment of the duty. For the fulfillment of the duty, it is required that the woman's vessel be penetrated and that semen be deposited within the vessel. There is no marital copulation unless semen is emitted into the vessel, nor is there a true marital copulation unless the woman's vessel is penetrated. Therefore, if a man does not emit semen into the vessel, or if the man's penis does not become erect, he must be considered impotent. Nor does the excuse of the man seem acceptable, namely, that the woman's unfavorable appearance, or even her enmity, immediately diminished his strength.

[*Latin ed. p. 487*]

NEAPOLITANA 487, for neither could seed be emitted. But, on the contrary, the heat of concupiscence and the weakness of his powers combined to impede the perfection of the union. The member did not become erect with sufficient force, and therefore, seed was not emitted spontaneously. All witnesses, on both sides, testify the same thing, although they vainly maintain that Edward possessed virile potency. The testimonies of these witnesses are based on what they received from Edward; namely, that he had complete intercourse with both chaste women and prostitutes. But such testimonies seem suspect, and prostitutes, for profit, could have deceived Edward, nor could they care for his salvation, because they had

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other clients from whom they could satisfy their unrestrained concupiscences. Furthermore, it can be judged that a relative impotence afflicted Edward with regard to Adelia perpetually. Edward offers an excuse for his lack of strength to consummate the marriage, claiming that, at first sight, he was indifferent and scornful; on the contrary, Adelia testifies that there had been affectionate words and actions. Adelia gladly accepted Edward as her bridegroom, and never, throughout the entire period preceding the celebration of the marriage, did she manifest any sign of a hostile disposition. She followed him joyfully on the nuptial journey, to what end, scorn and indifference? He himself confessed that he consulted a doctor and used remedies. Therefore, he was aware that it was not the woman's disposition that was the cause of the problem, but his own constitution. Doctor Stanziale prescribed a remedy to him, after having questioned him about the course of his previous life, and thus discovered a diseased condition and a weakness in the sexual organs. Edward himself confesses that the remedy was not effective, because for two months he was carnal with a woman, without deflouring her. And indeed, whether man or woman, when marriage is not consummated in any way, they suffer from an infirmity. Edward's words confirm that he was impotent, and while he seems to be excusing himself, he accuses himself. He states that he has had perfect erections and, in order to test his powers, he frequently visited prostitutes and thus completed perfect unions. Wherefore, in such cases...

[*Latin ed. p. 488*]

488 In Naples, the erection was not experienced, and the marriage was not consummated with his wife. The experts, through slander, judged Edward to be impotent. But Edward himself often confessed that he had not been able to consummate the marriage; and witnesses from both sides confirmed this very thing. The reasons they give are not credible. Very rarely does a man suffer from frigidity, and the desire to possess his wife immediately produces an erection. But Edward himself confessed, and witnesses testified, that he never had an erection. What appears externally does not always reveal what is within. The Calabrian doctor speaks of the flaccidity of Edward's member, saying that it was not great; therefore, it was present. This statement is not about the quantity, but about the existence; the doctor implies that it exists, but in a small quantity. The doctor adds that the woman is to blame, asserting that she repelled him. But Edward often confessed that the woman was passive in all experiments; therefore, she was not repelling him. Another doctor suspects hysteria. But hysteria does not affect one and the same person, but all. Another doctor brings up a negative function in some women, and thus explains Edward's impediment, which he claims is negative. Therefore, it must be concluded that the marriage was null, even considering this aspect. For relative impotence invalidates the marriage, provided it is perpetual. If either Adelia or Edward suffer from a

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negative functional condition, this consists in a natural constitution of the body. Such a constitution is perpetual. Therefore, the impediment must be considered perpetual. All the witnesses bring up the woman's repugnance. This excuse was placed in their mouths, as I believe, by Edward himself. The woman was free, and at the time when she should have been playing, she showed no repugnance to her lover; no one suggested that she had any aversion to her husband, Edward; possible! On the very day of the wedding, in the act of consummating the marriage, to which she willingly gave her consent, there appeared a repugnance such that it produced impotence in the man.

[*Latin ed. p. 489*]

NEAPLES 489. Adelia was afflicted by calumnies for several years. But they vanished with the help of the Lord, patron of the oppressed. In a cause brought before the ecclesiastical court between Adelia and Inzovich, her integrity was examined and proven. Quickly, Edward asserted himself, and after a few months, he betrothed her. Edward often swore in the process that she had not been defiled. All the witnesses testified that she was chaste: a second witness, under oath, affirmed that she came to him in a state of virginity, and gave other evident signs of virginity. All the witnesses unanimously testified that Adelia was a virgin until the day of her second marriage. It is necessary to obtain a dispensation from the Holy See for a marriage that is valid but not consummated, for many reasons, but especially because the woman is civilly bound to a new husband. OPINION OF A CANONIST. To discuss the alleged nullity arising from the head of impotence would be superfluous; for if there is an impotence in the man, whether given or not, this is merely accidental, transient, and in some way only moral, and therefore it cannot in any way affect the validity of the marriage, but only its actual use or non-use, as can easily be deduced from the whole of the proceedings. Therefore, the Neapolitan court will have to carefully consider the alleged lack of consummation. However, given the special gravity of this case, in which the impotence of the husband is presented by the bride and some witnesses, in order to obtain a fuller knowledge of the facts, and so that the husband may not be judged without a serious reason to suspect impotence, three things seem to be worth investigating: 1. The fact of the lack of consummation; 2. The causes of the lack of consummation; 3. The causes for a dispensation from the valid marriage; 4. The suspicion of impotence in the husband. All of these, given the special condition of this process, require deductions from the testimony rather than canonical allegations. Regarding the lack of consummation, the man states: that he attempted the consummation of the marriage; but, due to a lack of full penile erection, the semen did not penetrate the vagina. This was repeated five or six times in the thirty days after the marriage contract.

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And although conjugal relations were produced for a year, he did not...

[*Latin ed. p. 490*]

490 In NEAPOLITANA, a marriage was attempted, but consummation did not occur. The necessary conditions were present, but the female vessel could not be penetrated. The woman testified that the marriage had never been consummated, although the man had made several attempts to do so, but without success. As stated in the chapter concerning commendable acts regarding frigidity and malice, or the sworn confession of the spouses regarding the lack of consummation is to be highly valued; although, as stated in the chapter concerning those who are known to be related by blood, they should not be separated solely on the basis of their confession, which is particularly relevant in this case, since the bride is recounting things that are foreign to the faith, or that contradict each other, or that do not appear to be truthful. However, in the present case, all the circumstances of the matter strongly confirm the sworn testimony of the bride regarding the lack of consummation. And if any discrepancies can be noted among the witnesses, these do not relate to the fact of the lack of consummation, which all admit with one voice, but to the causes of that lack of consummation. Both spouses desire the dissolution of the sacred bond, but they support the basis of the petition and the possibility of a dispensation with legitimate arguments. And indeed, relatives and affine of the bride testified with positive reasons regarding the lack of consummation. The same was confirmed by five other witnesses, relatives and affine of the bride, and especially Hercules (a tonsured man, the uncle of the groom). In addition to the witnesses from the family or kinship of the bride, there are also very serious testimonies from several men, to whom the marriage in question was well known, and who, as is clearly evident from the records, are worthy of the highest trust. The preceding testimonies are confirmed by the testimonies of witnesses from the side of the woman and by the official statements of those who brought the case. "The unanimity of the witnesses fully confirms the fact of the lack of consummation and the veracity of the spouses in this substantial part of the entire process. It does not matter that there are not seven witnesses on the part of the bride, for as Avanzini wisely notes in Acta S. Sedis, VI, 515: « In the present di-

[*Latin ed. p. 491*]

In Naples, the discipline requires that, in all cases, the testimony of seven witnesses be universally sought by the Sacred Congregation, but I have never observed the Sacred Congregation demanding seven witnesses from one side and seven from the other, nor have I found, as some interpreters claim, that it is sufficient to have witnesses from only one side. It requires, in all cases, the testimony of seven witnesses, that is, some number of relatives, neighbors, or other individuals, who are presumed to know the matter

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under consideration.

It is considered very useful, indeed, legally necessary, to examine the body of a woman in such cases, whenever her virginal integrity is alleged. But in the case we are discussing, such an examination would be both useless and illicit, since it is established that the woman is corrupt and has borne children from an illicit relationship with the lawyer Mosca, with whom she is only civilly connected.

However, it will be irrelevant to present the depositions of the woman and her accomplice, the lawyer Mosca, regarding this matter. The woman stated that she was found to be a virgin in her first carnal union with Mosca. The lawyer Mosca, with whom the woman, or Adelia, lives, recounts what he heard about the impotence of the man, Edward, and what he learned about the futility of the attempted coitus by the man himself, and also how he became the illegitimate husband of the aforementioned Adelia; and when asked about the condition in which he found her in that first illicit coitus, he replied that he found her to be a woman still possessing all the signs of virginity.

I do not overlook the suspicion that may be attached to the depositions of accomplices in any crime, but according to the dictates of sound reason and the teaching of canonists, this suspicion is sufficiently dispelled when such depositions are confirmed with proper evidence. To this extent, what is commonly said about infamous witnesses is relevant, namely, that they are admitted in various cases, and especially in cases of crimes, except; also, when the truth cannot be otherwise ascertained; and also, when they have been questioned by both sides, because then their credibility is presumed to be approved by the mutual consent of the parties. And if in chapter... [The passage is incomplete].

[*Latin ed. p. 492*]

492 In Naples. Concerning frigidity and impotence, it is admitted with sufficient clarity that the examination of the parties involved is permissible, and as a partial proof against the claim of potency, it can, a fortiori, be admitted in the present case the testimony of Adelia and Mosca, who, not of their own accord, but rather having been called by the judge, testify, and who, although sinners and improperly and scandalously connected, cannot be equated with ordinary women who publicly profit from their own bodies. The husband denies even the suspicion of impotence, stating that the only cause is the lack of consummation. Before the marriage, there was no love between the couple in the beginning, and then it was weak, indeed almost fictitious; which the husband attempts to prove, with the testimonies of numerous witnesses. Therefore, given all these circumstances, the presumption of a perfect marriage vanishes, and, in the presence of certain proof of the lack of consummation, the marriage is considered valid by law, and by right. "Indeed," says Ursaia, volume 2, discourse 3, num-

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ber 45, "the cohabitation of spouses does not cause the marriage to lose its quality and denomination as a ratified contract, when it has not been consummated with effect." Therefore, precisely because such a lack of consummation is clearly proven, whether the spouses have cohabited and slept together or not, it will always be true that the marriage is simply ratified, and consequently subject to the power of the Supreme Pontiff concerning its dissolution." The wife contends that the cause of the lack of consummation exists solely in the husband, and excludes all blame on her own part. Albert de Petra believes the account given by the bride. Also, Aloisia de Dominicis. Also, Theresia Stagliano, born Nicoletti. Also, Dr. Joseph Stagliano. Also, Joseph de Dominicis. The causes for a dispensation are not lacking in this case, indeed, they are grave and numerous. We have the mutual consent of the spouses and their desire to obtain a dispensation, and not a mere consent, which would be insufficient, but a consent joined with a grave and incurable discord between them. Regarding this, Sánchez rightly notes 2> 16: "It is not a sufficient cause..."

[*Latin ed. p. 493*]

NEAPOLITANA 493, concerning the matter. And thus, I believe, unless the spouses are so discordant with each other that a disastrous outcome, without hope of remedy, is feared. Furthermore, in the present case, there is present a reason for removing a great scandal, namely, the civil marriage of the bride with Mosca. Moreover, if even the mere fear of a great scandal is considered sufficient to obtain a dispensation from a marriage not consummated, a fortiori, it suffices when it is established that a scandal already exists (Cf. Sánchez, De Iustis, Clericati, etc.). And if there exists a sufficient reason, "when a man seeks by all means to repel his wife, without a probable hope of sound judgment," as Sánchez says, 2, 16; such repulsion can be not only material, but also moral, for there are moral repulsions which far surpass material violence, and such a reason must clearly be recognized in the present case, given not only the material separation of the spouses, combined with all manner of disagreement, but also and especially the attention and consummation of the civil union of Adelia with a man with whom she has an adulterous relationship and from whom she has conceived adulterous offspring. To this, the words of Clericati, decision 15, are applicable: "The tenth [reason] is, if one, after a marriage validly contracted with one, has contracted with another and consummated it."

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE OFFICE. In the year 1890, Adelia married Edward on June 17, with whom she lived for ten months. Then Adelia brought Edward to court, declaring herself chaste, like Minerva, and proclaiming Edward to be unfit for marital relations. The secular court ordered an examination of Adelia's body; which Adelia refused to undergo; because, as the Calabrian doctor said, she was already corrupted and had borne the effects of another man's actions. Then the

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secular magistrate ordered Edward's body to be examined. But Edward himself considered nothing more important than to prove his own worth; hence, he declared himself impotent in defiance. With these machinations, having ended the pseudo-marriage, Edward was entirely...

[*Latin ed. p. 494*]

494 In Naples, it is the case that true marriage loves those who are light of spirit. In the civil court, Edward's impotence was the issue; in the ecclesiastical court, Adelia's physical integrity is the matter at hand. And indeed, Adelia's physical virginity, unless I am mistaken, has been judged sound by the most learned theologians and canonists consulted. For the principal argument is lacking, namely, the appearance of the woman's body. This matter is of the greatest importance in the present case. Indeed, Adelia, when it was a question of annulling the marriage that she had contracted with another man before being joined to Edward, clearly knew that she had not fallen into error, since she had been declared a virgin by the archpriests, after an examination of her body ordered by the judge. Therefore, it is not easy for me to believe that Adelia, when she was diverted from Edward, a woman almost forty years old, threw away a lifeline. I would rather believe that her virginity had been lost long ago by a very virtuous woman. Nor is it more trustworthy to believe Edward. For if you listen to him, the marriage was not consummated because Adelia did not want it. But this is entirely contrary to probability. It is indeed clear that, as an excellent theological consultant has demonstrated, Adelia was not only not forced by anyone, but was brought to the marriage with pleasure and affection. But that Adelia is not chaste is clearly demonstrated by the three children she already has. Someone might ask, what if the marriage was not consummated not because of Adelia's lack of will, but rather because of Edward's lack of virility? I reply: if that were the case, Edward would not be acting in court. For what benefit could he possibly hope to gain from the attempted action? Indeed, the vision of a marriage not consummated for a time because of the husband's impotence cries out that the marriage should not be dissolved without the clause "Forbidden to the man to enter into other marriages." With these considerations in mind, the proposed measures must be reconsidered.

[*Latin ed. p. 495*]

NAPLES 495. Questions. I. Does a nullity of marriage exist in this case? And if so, to what extent? II. Should a petition be made to the Most Holy [Father] for a dispensation from a marriage that is valid but not consummated in this case?

RESOLUTION. The Sacred Congregation, after deliberation on September 12, 1896, decided to respond: To I, negatively. To II, affirmatively.

REGARDING AN IRREGULARITY OF THE VENETIANS. On Septem-

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ber 12, 1896, the Vicarius capitularis of Venice reported on August 14, 1893, that there was a young man named Anthony Saccardo, born on April 2, 1872, in the Seminary, who, having completed his theological studies, could be promoted to the Order of Subdiaconate. He stated that nothing hindered this promotion, except for the young man's intelligence, piety, and progress in his studies, with which he is amply endowed; but also a slight infirmity from which he suffers since childhood. For a very short time, while he is afflicted by the illness, he remains immobile and silent, and does not fall to the ground, because, foreseeing the evil, he seeks a support. But he quickly recovers his normal state. Therefore, since it seemed to be a minor matter, the lesser orders were conferred upon him; but regarding the Order of Subdiaconate, I refer the matter to the judgment of the Apostolic See, said the Vicarius. The physician, whose testimony is attached, believes that this infirmity, being so slight, does not present an obstacle to the reception of the sacred orders. Nevertheless, the Sacred Congregation responded: For the present, it is not advisable. On July 13, 1895, the Cardinal Patriarch, again praising the young man, once more requested a dispensation, noting that, as a precaution, it could be determined that...

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 496*]

496. When a young man is preparing to enter the priesthood, a priest should be present. It was then determined that the young man should be examined by a physician. This physician, acting on behalf of the Ordinary, examined the young man Anthony and reported: "He does not appear to have the disposition necessary to write a dissertation on the subject matter, but rather, he seems only to be able to present the difference between the affliction that prevents the young man from progressing towards the sacred orders and true epilepsy. Epilepsy is a convulsive and hysterical disease, in which the entire constitution of the body is shaken, the person is often and suddenly seized, movements are made from the mouth, and then, after a time, he returns to himself, rising by his own power. Regarding this matter, as is evident from the attached extraordinary document, epilepsy was once considered a grave affliction, and the milder phenomena that are now attributed to epilepsy were disregarded; but this is not entirely correct, and these milder symptoms can easily be overlooked, to the detriment of the sacred canons. Now, turning to our case, it appears that the young man Anthony has never exhibited the signs of a severe epilepsy, while the phenomena that accompany his affliction have been of lesser importance since childhood, shorter in duration, and decreasing in intensity with each passing day. The young man, in fact, experiences a seizure: and then he abandons the work he has begun, suspends his journey, and seeks even a

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slight support, which is sufficient to prevent him from falling to the ground. After a short period of time, he regains his composure. In these signs, the absence of epileptic characteristics is now observed. Therefore, the physician concluded that he was of the opinion that the petition of Anthony should be accepted, and that he is capable of progressing towards the sacred orders." The Cardinal Patriarch, in his letter, supported this opinion, and insisted that the desired permission should be granted to the young man by the Orator. A synopsis of the reasons that prevent the granting of a dispensation is given in the general prescription of the canons, which is summarized in can. 1, cap. 7, quaest. 2, in the Decree, where it is stated: "Therefore, we advise that if this infirmity (falling sickness) is frequently present, it should be DENIED."

[*Latin ed. p. 497*]

VENETIARUM 497 (a presbyter), sit interdictum ab omni oblatione et celebratione Missarum. Nam est indignum et periculosum, ut hoc ei eveniat, ut in consecratione Eucharistiae, a morbo epileptico oppressus, cadat. Si vero, per misericordiam Dei, convalescerit, cum causa non sit culpa, sed infirmitas, iam non impedimus eum sacrificare." Hoc praeceptum, in summa, urget gravius, quia non de promotione iam facta, sed de promotione ad ordines est quaestio. GRATIA INDULGENDA VIDESE. Ad hanc rem, cum plus exempla dispensationum in causis similibus, quae non multum iuverunt, referre videtur, narrabo unum casum Trerirensem. Dispensationem ab irregularitate, diei 22 Ianuarii 1866, quae nostro casui valde cohaeret. Agitur de iuvene promovendo ad sacros ordines, praestante sanctitate morum et docilitate ingenii, qui sacris ordinibus initiari volebat. De eo medicus haec referbat: "1. Convulsiones clerici Baldi obveniunt vel quaternis vel quinque mensibus, et quidem noctu vel ad summum, una hora postquam e somno surrexit; 2. Iam vero, non praeter expectationem, sed cum causa eorum non sit ignota, eas pro certo praevidere potest; 3. Non est timendum ne interdiu morbus accedat, cum ipse medicus testatur, in manu esse supplicantis ne hoc fiat; 4. Morbus non est vitium organicum, sed mera dispositio quae evanescet, cum animi tranquillitas, rebus parum secundis hucusque impedita, supplicanti reddita fuerit; 5. Supplicans corpore aliter sane atque firmo ad munia sacerdotalia aptus est." Sed S. C. C. respondit: "Pro nunc, non expedire." Orator ab Episcopo et a Medicis commendatus iterum instabat die 26 Iunii 1867, et repositum fuit: "Dilata et recurrat post sex menses, exhibito documento etiam alterius medici, ab Episcopo deputandi." Die 11 Ianuarii 1868, medicus suam obtulit sententiam, qua asserebat, Oratoris morbum haud gravem esse et organicum, et magnopere esse optandum, ut clericus ad ss. Ordines admitteretur, quia reddita animi tranquillitate, cito plane sanus foret. — Tunc Acta, Tom. XXIX,

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fase. CCCXLIV, 32.

[*Latin ed. p. 498*]

498 The VENETIAN Sacred Congregation of the Council responded, "For the sake of the dispensation and residence, if the words are spoken with the Most Reverend [official], 'yes, no.'" Having considered these matters, the question was raised as to how prayers should be dismissed. RESOLUTION. The Sacred Congregation of the Council, having taken note of the matter on September 12, 1896, decided to respond: "For the sake of the judgment and prudence of the Most Reverend Patriarch, with the precautions deemed fitting, if the words are spoken with the Most Reverend [official], 'yes.'" ARIA. OFFICE OF THE PENTITENTIARY. December 12, 1896. By summary prayers. On January 7, 1896, the Canon of the Penitentiary of the Cathedral of Arian, appealed to the Sacred Congregation of the Council, asking whether he should be considered present in the choir, in order to benefit from the distributions, when, on feast days, he sits in the confessional, although he does not continuously hear confessions, but alternately hears confessions or attends to penitents, who often come to the church because of the large number of people present. SUMMARY OF THE CASE. SYNOPTIC DISCUSSION OF WHAT IS OBJECTED TO THE PENTITENTIARY. It was observed from the official documents that, from the Council of Trent, the prescription must be repeated that the Penitentiary "while hearing confessions in the church, should be considered present in the choir in the meantime." Session 24, chapter 8, on reforms. But this presence, which consists in a legal fiction, is not to be extended beyond the case expressly provided for by law. Hence, Doctors and jurisprudence have interpreted this legal prescription in such a way that the Penitentiary is considered present in the choir, provided that he is actually hearing confessions. The Sacred Congregation of the Council decided to respond to the question, "Is the Canon Penitentiary of Alban, obliged to serve as a deacon and subdeacon on solemn days in this case?" on July 30, 1831, with "Affirmative, unless he is actually hearing the confessions of the faithful." And as reported by Benedict XIV, Institutes, 107, n. 75; the Sacred Congregation of the Council granted the same privilege to the Canon whom the Bishop appointed to hear confessions in place of the Penitentiary, stating in this decree: "The Sacred Congregation decided, therefore..."

[*Latin ed. p. 499*]

ARIANEN. 499. Thus, the confessor, being assigned to the place of penance to hear confessions, either by necessity or for a legitimate reason, by the Bishop, is to perform the daily distributions, just as if he were participating in the Divine Office in the choir, during the time that he is actually hearing confessions. - Barbosa, in the collection, in the Council of

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Trent, in this chapter, taught: "The confessor is to be considered present in the choir while he is hearing confessions in the church, whether in the confessional or outside of it; but not during the time that he is residing in the confessional, nor when others are celebrating the Divine Office in the choir, nor if he himself says Mass or performs the office privately, because it is to be considered that he is present in the choir in order to hear confessions more conveniently." Furthermore, De Beneficiis, V-IV, n. 125, states: "The confessor is not only considered present in the choir and cannot be deprived of [benefits] when he hears confessions, but he is also considered present at processions and at the funerals of the dead, which take place at the time when he is hearing confessions, but it is not sufficient that he is in the confessional, unless he is actually hearing confessions."

CONCERNING WHAT BENEFITS THE CONFESSOR. But, in order to answer the question more precisely, it must be noted that in the chapter "Arianen," two kinds of distributions are distinguished: namely, some are established according to the norms of chapter 3 of session 22 and chapter 12 of session 24 of the Council of Trent; and the chapter members benefit from these even through legitimate, vicarious presence. Others, however, are daily distributions, so to speak, which are given according to the will of the founders, only to those who are actually present. As c. Santi, title 4, book 3, Decretum, n. 87, states, these can be called "truly and properly manual distributions," "because in a certain way they are given to those present after the sacred work is completed." These are established in the church of Arianen, article 51 of the statutes, which states: "However, there are certain manual distributions which are immediately distributed by the treasurer among those who are actually present, and those who do not participate in the choir do not participate in them at all, and this rule also applies to the canons, the penitentiary, and the theologian." For this reason, in the matter at hand, the question does not concern these truly manual distributions; but the question concerns the daily distributions, which are established according to the norms of the Council of Trent. Indeed, the Doctors cited by the Divine Alphonse, who seem to support the intention of the questioner, offer a certain response.

[*Latin ed. p. 500*]

500. ARIAN. The Sacred Congregation of the Council decrees that the Bishop can compel the confessor to be present at the confessional on certain more solemn days, in order to attract the faithful and to administer to them the Sacrament of Penance. This decree is cited by Crispino in *De Visitatione Pastorali*, Part II, § 24; he also states that it is taken from the volume of Decrees of the year 1646. The decree is of the following tenor: "Since the Bishop of Yerulanus ordered that a confessor should be present in the confessional on solemn feast days, during Lent, during Advent, and on other feast days, as stated in the decree, and it was asked whether it was

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permissible for the Bishop to enact such a decree, on January 19, 1646, the Congregation of the Council decided that the Bishop should compel the confessor to obey." The cited author then adds: "Therefore, it depends on the judgment of the Bishop to prescribe the days on which the confessor must be present in the confessional; but in Segovia, on December 10, 1585, such days were prescribed by the Congregation." However, no one should doubt that the confessor is obligated to obey such a decree of the Bishop, by virtue of his office of hearing the confessions of the faithful; and he cannot excuse himself by saying that he is not obligated to hear confessions unless he is called. The Sacred Congregation of the Council, in the decree of January 24, 1642, from book 16 of the Decrees, decided that the confessor, when not impeded in the office of hearing confessions, should attend the Divine Offices. Therefore, it seems to follow that the confessor is considered to be present in the choir when he is impeded in the office of hearing confessions; and this office sometimes extends beyond the act of hearing confessions and includes being present in the confessional in order to await and invite penitents. But indulgence must not be given to evil; and it is the judgment of the good Bishop to decide or declare when this office of the confessor is required. With these considerations, the question was asked what should be answered to the confessor. RESOLUTION. The Sacred Congregation, having considered the matter, decided to respond: "One must follow the disposition of the Council of Trent, Session 8, on reforms, and in accordance with (1)." (1) The intention of the Sacred Congregation, which cannot be made public, perhaps refers to the obligation to inform the Ordinary. In order that, in Fermo, a permanent disposition regarding choral distributions for the time when the confessor is actually hearing confessions, the Bishop, according to his good judgment, may regulate the office of the same confessor for that time in the confessional, in order to await the faithful.

[*Latin ed. p. 501*]

501 FROM THE SACRED CONGREGATION FOR RITES: LETTERS. From the Sacred Congregation to the Most Illustrious Count John Acquaderni: in Bologna. Concerning the celebration of the centenary of the redemption of mankind. Rome, May 14, 1895.

Most Reverend Lord, By order of the Holiness of Our Lord, the Sacred Congregation of Rites, in its assembly held in the Vatican on the 7th of the current month, examined, together with the letter sent by Your Excellency to the Most Eminent Cardinal Secretary of State on March 24th, the program attached therein for the celebration of the nineteenth centenary of the Redemption, which, according to the common reckoning, would occur in the year 1900. It is entirely praiseworthy and meritorious to draw inspiration from every occasion to awaken piety in the faithful, and to rekindle their devotion to the Apostolic See; which, certainly, at the command of the

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Most Holy Lord Pope, the Congregation of Fathers entrusted with the safeguarding of sacred rites, in a meeting held on the 7th of this same month, in the Vatican buildings, diligently considered both the letters sent by the Most Eminent Cardinal, the Pope's first secretary to foreign dignitaries, on March 24th of the past month, and also the program annexed thereto, concerning the celebration of the novendeciescentesimal (nineteen hundredth) anniversary of our Redemption, which, according to the common reckoning, would occur in the year one thousand nine hundred. Indeed, it is a matter worthy of praise and reward before God to draw from every occasion of time to excite the piety of the faithful in God, and to inflame devotion towards this Apostolic See.

— Since certain calendars seek to associate, in this outgoing or newly beginning century, a tribute to Christ the Redeemer with the centenary celebration for the Redemption, or with the nativity of the same Redeemer, it should be remembered that, by order of the Holy Church, the aforementioned plan has already been submitted to examination, and conclusions have been reached, which may be read in the letters attached herein.

[*Latin ed. p. 502*]

502 EXAMPLES. Concerning the CUSTOMS, if those who promote this idea wish to present an argument to the Apostolic See and to the authors of the Program, they should consider this: Although the Sacred Congregation intended to express its opinion with due consideration, it must immediately be stated that it found the proposed solemnity to be entirely new, inappropriate, and even somewhat unsuitable for the use of secular feasts, which are already so widely established and frequently employed for the principal mysteries of our Holy Religion. It cannot, nor must it, be supposed that it is necessary to revive the memory of these things after 25, 50, or 100 years have passed.

Whoever considers these mysteries as particular feasts, and wishes to draw a proposal not dissimilar to that which is read in the Program, namely, to erect, in memory of the celebrated secular solemnity, an Altar of Redemption, as if in all the altars of our churches the Crucifix were not adored, which is the most visible sign of the human redemption, and as if in all our prayers we do not invoke Christ as an intercessor before the Eternal Father, the divine Redeemer.

[*Latin ed. p. 503*]

From all of this, it is clear that those who devised and promoted this centennial commemoration did not give due consideration to the matter; nor did they recall the decision issued on May 31, 1884, by the same Sacred Congregation of Rites, in response to the request of many illustrious ecclesiastics and laymen, who proposed celebrating the centennial of the Nativity of the Most Blessed Mary. This decision was notified to the Most

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Reverend Cardinal Haynald by letter of June 1st, and was published shortly thereafter by Catholic newspapers.

Indeed, it is certain that he who devised and promoted this centennial commemoration did not consider the decision issued by the same Sacred Congregation of Rites on May 31st, 1884, which responded to the proposal of many most distinguished men, both ecclesiastics and laymen, who had proposed celebrating the centennial of the Nativity of the Virgin Mary (1). This decision was presented to the Most Reverend Cardinal Haynald in writing on June 1st, and was subsequently published by Catholic periodicals.

(1) In the words of the cited document: "It has been deemed that the custom that has prevailed of celebrating sacred centennial commemorations is less appropriate for the present situation. Since, as the same proponents of the centennial attest, the feast was to be introduced for the first time in this nineteenth century, as something new in the Church of God, and something that had not even been considered in all the preceding centuries by the great piety and devotion of our ancestors towards the most blessed Mother of God, or certainly something unusual."

It is certainly to be considered that a sufficiently sound theological and liturgical reason has arisen, so that secular celebrations, which are not denied to other saints who reign with Christ, should not be held for the most important and most sacred events of the life and mysteries of the Blessed Virgin; namely, for her Nativity, her Annunciation, her Assumption, and for other similar events. For the Church venerates the Queen of Heaven and Lady of Angelorum with greater reverence than all other saints, to whom, insofar as she is the Mother of God, is due not any kind of *dulia*, but *hyperdulia* (St. Thomas, 3rd part, question 25, article 5). Therefore, rather than a centennial commemoration, the Church always renders this supreme worship and pays this same honor to the recurring solemnities of her mysteries; while the worship of the Mother of God in the Church is plainly a daily one, and almost without any limitation of time.

These few, or rather, lightly touched upon points, sufficiently demonstrate the prudence of the Sacred Congregation, which, after mature deliberation on the question: "Is it expedient to hold a centennial commemoration of the Nativity of the Blessed Virgin Mary throughout the world next year, 1885?" responded unanimously: "It is not expedient."

[*Latin ed. p. 504*]

504 FROM the Sacred Congregation of Rites. In the attached sheet, you will find the part that I have added, so that Your Eminence may find, with the greatest possible reason, the matter which most urgently requires your attention, and which, therefore, could not receive any answer other than that which it now receives, namely – to be expedited – that is, to be expedited. Having carried out the resolution of the Sacred

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Congregation, and bearing in mind the will of His Holiness, I am grateful to repeat to Your Eminence the sentiments of my most perfect devotion. To Your Eminence, I, your most devoted servant, CARDINAL ALOISI-D'ASELLA, Prefect, Rumehen. Doubts regarding the Decree *Aucto* (1) concerning Private Masses for the Requiem. Several Rectors of Churches have humbly proposed to the Sacred Congregation of Rites the following doubts concerning the legitimate interpretation of the Decree *Aucto*, published on June 8th of the past year, 1896, concerning private Masses for the Requiem, granted on the day and for the day of the death: I. Does the privilege concerning recited Masses for the Requiem, granted by the aforementioned Decree to chapels of the dead, favor the celebration in either the church or oratory, public or principal, of the aforementioned chapel, or in other churches or chapels, outside the cemetery, under which the body of a deceased person rests at a legitimate distance? II. Will private Masses for the Requiem, which can be celebrated under certain conditions in the presence of the body, be permitted in any churches or oratories, whether public or private? III. Can such private Masses for the Requiem be celebrated without an offering for the deceased, whose body is or is considered to be present? IV. Can the same Masses also be celebrated on days other than double days, which, however, exclude double major feasts, such as, for example, the fourth day of the Cineres? (1) You have this decree at XXIX, 62.

[*Latin ed. p. 505*]

505 And the Sacred Congregation, after considering the report of the undersigned Secretary, the careful opinion of the Liturgical Commission, and all matters thoroughly, decided to respond as follows: To I. Negatively, to both. To II. Affirmatively, provided that the body is physically or morally present; but, if it concerns public churches and oratories, a funeral with a funeral Mass must also be performed. To III and IV. Negatively. And thus it was recorded and ordered to be observed, on January 12, 1897. FROM C. CARD. S. C. RITUUM ALOISI - MASELLAS, Prefect. R. C. PANICI, Secretary. MEDIOLANEN. Concerning the canonization of B. Anthony Mary Zaccaria, Founder of the Congregation of Regular Clerks of St. Paul, also known as the Barnabites, and also of the Angelic Virgins. CONCERNING THE DOUBT: What miracles are to be considered in this case, and which pertain to the effect in question?

If any age of holy men was distinguished by number and quality, it is certainly that of the sixteenth century, which also produced so many heretics. Those enemies of the truth, who sought not to undermine one or another dogma of the faith, but to destroy the Church itself, although with vain hopes, it was fitting, and entirely to be expected from God, that stronger defenses would suffice for them, so that greater dangers, and a larger and more numerous host of defenders of the spirit, would be raised

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up, and that the more daring bands of enemies would be repelled. Hence that most select phalanx of holy warriors, who, as if bound by an oath, advance into battle, and, like Nehemiah, while with one hand they engage in combat against errors, with the other they repel the reproaches and slanders inflicted upon the Religion. Among these was Anthony Mary Zaccaria, a truly singular man, and easily comparable to the first. He was born in Cremona, in Insubria, at the beginning of the sixteenth century, of a noble family. His natural talents, which were inherent in him, were adorned by virtue and the best studies, especially medicine, in which he received the degree of "donatus." Having completed his youth chastely and uprightly, when he understood that he was being called to heal other infirmities, he desired nothing more than to be enlisted in the army of Christ God, and to be raised to the priesthood. After making his vows, it is difficult to express how much effort he devoted to cultivating souls and turning them to better things; above all, he sought to protect those minds that were immune from the errors that were spreading widely, and to repair the blemishes that had been brought to the Christian religion and to good morals.

[*Latin ed. p. 506*]

From the Sacred Ritual, 506, the disturbance was deeply abhorred. However, in order that the study of virtue might be more widely promoted, and that it might be fostered, every effort was made to excite, more and more, piety towards Christ the Lord in the august Sacrament; and it is said that he instituted that the Sacred Host should be publicly venerated for three days from the sublime altar. The most holy man was also concerned that the people might strive for the most excellent virtues, and that they might live according to the discipline of our religion, who venerated the priesthood of Christ the Lord. It was also constantly in his mind that the youth, being instructed in the best institutions, might bring hope to the Church, and that their manners might be matured in piety. But, understanding that no one man could bear so great a burden, and that the part which they did not refuse should not be extended beyond measure, he decided to add members to his company, who would continue the work he had begun. Therefore, after consulting with the most noble and pious men, Bartholomew Ferrari and James Morigia, he founded a Society in Milan, and gave it the name of the Society of Clerks of Saint Paul; that of the Apostle, whom Blessed Anthony had taken as his patron and example to be imitated. Later, they were called from the house of Saint Barnabas, which had been entrusted to them. This Society was duly and piously approved by the Roman Pontiffs Clement VII and Paul III; and its merits, both in matters of the Christian faith and in civil affairs, are attested by the illustrious men whom it produced, and who distinguished themselves by their sanctity of life, their honors, their services, their knowledge, their literature, and their deeds. To his praise are added those who applied their

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genius to investigating the powers of nature, and especially to discovering the laws of the heavens, or to describing the orbits of the revolving stars, and to tracing their movements. For they were persuaded that nothing more could demonstrate the glory of God in this admirable order of things than the heavens, and that, especially from the heavens, the Creator of all things could be clearly seen. Another excellent and useful work was undertaken by Blessed Anthony, namely, the establishment of a college of Virgins, which he named the Angelic College of Saint Paul, who were concerned with the education of girls, and who also worked to restore the former strictness of the rule in some groups of women in Insubria; which was very successful. The final days of Blessed Anthony Mary arrived: the seeds of illness, hidden in his heart, brought forth labors and contempt; his strength failed. Nevertheless, with an erect spirit, he did not cease to care for the advancement of religion, and he contemplated heavenly things with even greater zeal, as he drew nearer to them. He was taken from this life in the middle of his years, when he was thirty-six years old; but, as far as virtue and the good of the Christian cause are concerned, he lived a long life. These are, in summary, the monuments of piety which Blessed Anthony Mary left to posterity; therefore, he has not entirely departed from us, even though he has changed the earth for heaven. Nevertheless, by the inscrutable judgment of God, it was decreed that heavenly honors should be conferred upon him later.

[*Latin ed. p. 507*]

507. Signs and miracles did not fail to accompany this virtue. Finally, the Most Holy Pope Leo XIII, granting assent to the petitions of the Confraternity of Saint Anthony, and after all had been made known and carefully considered by the Sacred Congregation, on January 11th, in the year 1890, solemnly issued a decree of restoration, by which he granted indulgence to honor their Patron with the title and veneration due to a Blessed. Soon after, as they urged that he be further honored and that the name of Blessed Anthony be inscribed in the list of Saints, especially since three miracles were being circulated as having been obtained through his intercession, the Apostolic See ordered that a thorough investigation be conducted. The proceedings were examined by the Sacred Congregation, and were found to be verified.

The first case occurred in the Archdiocese of Bologna in the year 1876. Vincentius Zanotti, a farmer, was suffering from a foul ulcer. No remedies were applied, or if they were, they were ineffective. Tormented by pain, he was often confined to his bed, and there was no hope of recovery according to the judgment of the doctors. By chance, an image of Saint Anthony, relics, and a history of his life came into his hands. After reading this, he was filled with hope of regaining his health. Therefore, he turned to Saint Anthony, and began to offer novenas of prayers, which he completed. Finally, on the

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last day, the ulcer disappeared, and scarcely believing his own eyes, he found that it had vanished so completely that he was not only able to walk freely, but he was able to return to his work in the fields.

The second miracle occurred in Cremona in the year 1873. Paula Aloni, who had previously enjoyed excellent health, was afflicted with nervous rheumatism, convulsions, pains, and delirium when she was fifteen years old. Soon, it became apparent that this was due to a tumor of the worst kind that was developing in her throat. This incurable condition of the spinal nerve center forced Paula to remain in bed for seven years. When there was no hope of recovery, she asked for the help of Saint Anthony, who immediately came to her aid. Although she was deprived of her senses, and her last breath was a painful gasp, so that she could be considered dead, she suddenly recovered.

The third miracle also occurred in Cremona. Paula's brother, named Franciscus, had suffered from herpes since his earliest years. As he grew older, he was often afflicted with inflammation of the brain, so that his mental faculties seemed clouded. When he grew up, and unfortunately fell and broke his leg, he developed a tumor that gave way to chronic and incurable osteoperiostitis. Overcome with grief, he went to his sister, who encouraged him to be of good cheer, saying that when human remedies fail, heavenly help remains. She told him that she herself had experienced the help of Saint Anthony, and that he should therefore turn to him and hope in him. Without delay, he placed the relics of the Saint on his injured leg, and offered novenas of prayers. Before these prayers were completed, Franciscus was completely restored from his infirmity.

Regarding these miracles, a proper investigation was instituted; the first was in a preparatory meeting held on the sixth day before January, in the year 1890, under the direction of Cardinal Lucidus Ma[...].

[*Latin ed. p. 508*]

From the Sacred Rites, number 308, concerning the cause of the Blessed Peter Fourier, Anthony Mary Zaccaria, and Saint Rufinus; the Relator of the cause: and afterwards, the question being raised, a preparatory meeting was held on the first of September of the preceding year at the Vatican; finally, at the general assembly before His Holiness, our Lord Pope Leo XIII, in the Vatican buildings, on the fourteenth of the Kalends of February of the current year, at which the aforementioned Reverend Cardinal Lucidus Maria Parocchi, Bishop of Portua and Saint Rufinus, and Relator of the cause, proposed the question: "Whether, and concerning which miracles, it is established that they occurred through the purity and for the purpose for which they are invoked?" The Reverend Cardinals entrusted with the Sacred Rites, and the Consultor Fathers, with unanimous consent, expressed a positive opinion. His Holiness accepted the votes of all, but deferred judgment, stating that, with God's help, he hoped to soon pronounce a

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decree, in complete agreement with the opinions of the Reverend Cardinals and the Fathers. Then, after a beautifully delivered address, in which he urged all to work diligently, he fervently prayed to God that our common efforts might contribute to the honor and glory of the Catholic Church, and to the good of France and Italy, where Peter Fourier and Anthony Mary Zaccaria were born, so that, through these intercessors before God, both nations might return to their former dignity and prosperity. On this present Sunday, the Seventieth after Pentecost, the day after the Ides of February, after the Sacred and most devout ceremony, the Blessed Father ordered the Reverend Cardinals Caietan Aloisi-Masella, Prefect of the Sacred Rites, and Lucidus Maria Parocchi, Bishop of Portua and Saint Rufinus, Relator of the cause, to be brought before him, together with the Reverend Father Gustavo Persiani, serving as Promoter of the Faith, and myself, the undersigned Secretary, and, in their presence, solemnly declared: "That three miracles are established; namely, the first: the instantaneous and perfect healing of Vincent Zanotti from a chronic and incurable varicose ulcer on his left leg; the second: the instantaneous and perfect healing of Paula Aloni from a chronic and incurable organic affection of the spinal nerve center; and the third: the instantaneous and perfect healing of Francis Aloni of Cremona from a chronic and long-standing ulcer on his right leg." He ordered this decree to be published and inserted into the records of the Congregation of Sacred Rites, on the day after the Ides of February, in the year 1897. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Rites. L. * S. DIOMEDES PANICI, Secretary of the Sacred Rites.

[*Latin ed. p. 509*]

FROM THE SACRED RITUALS, 309, TOUL, or SAINT-DIÉ. Concerning the canonization of Blessed Peter Fourier of Mataincouria, a priest of Lorraine, General Prefect and Reformer of the Congregation of the Regular Canons of Saint Augustine, now called the Order of the Most Holy Savior, and also the founder of a community of nuns under the title of Our Lady, and of the rule of the same Saint Augustine. CONCERNING THE DOUBT: Whether, with the approval of two miracles, it is permissible to proceed to the solemn canonization of the same Blessed. It is the custom of the Church to perpetuate the memory of those who, either by shedding their blood for Christ, or by exhibiting outstanding examples of virtues, have shone forth for the edification of others, and to increase their heavenly honors. Blessed Peter Fourier, born in the year 1566 in Mataincouria, a not insignificant town in Lorraine, is rightly to be included among these. He was born to parents who, by word and example, instilled in him honesty, virtuous conduct, and a good disposition. He eagerly embraced letters, and did not neglect to cultivate them. But he preferred virtue to learning, and devoted himself more to the former, joining a sodality of canons who followed the rule of Saint Augustine. After completing his studies, he was admitted to

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the sacred ministry of Christ, and was honored with abundant testimonies of virtue and learning. Appointed as a curate in the town where he had been born, he did not lack either wisdom or faith. No time was wasted, and nothing was lost, in his efforts to help others. He readily offered comfort to those who confessed, brought healing to the sick, was present to those who were dying, relieved the needs of the poor, and received those who sought his counsel with gentleness, so that they would not be drawn into disputes. It is therefore not surprising that he was often sent by the Bishop of Toul to visit the parishes of his diocese, and that he was appointed by the Cardinal Legate to lead sacred expeditions throughout Lorraine, which were undertaken to promote the spiritual welfare of the people. The results of these endeavors are countless: hatreds were put to an end, the seeds of quarrels were extinguished, conspiracies were thwarted, and the shadows of error that had plagued the minds of men were dispelled, and religion emerged as if in a new light. During this time, the Order of the Regular Canons had fallen into a state of laxity, which Blessed Peter sought to remedy by devoting all his energies to restoring it. Knowing that examples are more persuasive than words, he strove to lead others by his example. Therefore, in him were found the highest degree of humility, the highest degree of chastity, the highest degree of prudence, and above all, the highest degree of austerity. This austerity was so great that his body was often broken by the use of the scourge and the iron belt. The fruits of Peter's wisdom and labor were fully realized; for the Order, restored to its former discipline, and he himself, as a father, and as a reformer, who added new laws, reformed the habits of his Order. He also undertook another work no less useful, namely, the founding of a community of Virgins, to whom the name of Our Lady was given.

[*Latin ed. p. 510*]

From the Sacred Rituals, number 510, she performed actions which demonstrated great care for the poor young girls. Therefore, she attracted the attention and devotion of all, not only through her virtues, but also through her actions. After her death, she received the honors due to a man of exceptional virtue. When evidence of miracles began to emerge to illustrate her life, and these were duly proven, Pope Benedict XIII bestowed upon her the honors of the blessed in Heaven. Later, the cause was reopened, and an investigation was held regarding two miracles. On the feast of Epiphany, Our Most Holy Lord Pope Leo XIII decreed that both miracles were genuine. This is the matter to be inquired into, according to the statutes of this sacred court: whether the honors of the blessed can be conferred upon Blessed Peter Fourier of Mataincourt. Therefore, at the general meetings of the Sacred Congregation, before Our Most Holy Lord, on the fourteenth day before February, Cardinal Caietan Aloisi Masella, Prefect of the Sacred Congregation and Relator of the Cause,

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proposed the following question: "Given the approval of two miracles, can the solemn canonization of this Blessed proceed?" Although the Most Reverend Cardinals and Consultors unanimously responded that it was possible for Blessed Peter Fourier of Mataincourt to be declared blessed; nevertheless, the Most Blessed Father hesitated to reveal his mind, so that he might seek the help of heavenly assistance through prolonged prayers. On that day, the Sunday of Septuagesima of the aforementioned year, the Reverend Cardinal Caietan Aloisi Masella, Prefect of the cause, and the Reverend Father Gustav Persiani, appointed as Promoter of the Faith, and I, the undersigned Secretary, were summoned to the Vatican Basilica, and in their presence, he declared: "The solemn canonization of Blessed Peter Fourier of Mataincourt can proceed." This decree was to be made public, recorded in the acts of the Sacred Congregation, and letters apostolic were to be issued under seal, concerning the solemnities of the canonization to be celebrated whenever desired in the Patriarchal Basilica of the Vatican, on the sixteenth day before March, in the year 1897. CCARD. ALOISI-MASELLA, Prefect of the Sacred Congregation. L. S. D. PANICI, Secretary of the Sacred Congregation. MILAN. Concerning the canonization of Blessed Anthony Mary Zaccaria, Founder of the Congregation of Regular Clerks of Saint Paul, and also of the Angelic Virgins. Question: Given the approval of three miracles, and a dispensation from a fourth, can the solemn canonization of the Blessed proceed? More than through years and stipends, the virtues and works, in the city of Cremona, sixty-three years ago...

[*Latin ed. p. 511*]

Anthony Mary Zaccaria, founder and father of the Congregation of Clerics Regular of St. Paul, had been declared a Servant of God. He passed away in the month of July, in the veneration of 1539. Having anticipated old age, he had scorned pleasures and the allurements of sin, and he disciplined his body with fasts, vigils, and penances, lest it should lead him astray. Moved by the sacred, and engaged in divine works, he strove ever more diligently that the glory of God and the salvation of souls might be increased; therefore, he was rightly worthy of the highest praise from St. Pius V. It is therefore not surprising that, even before the Church formally decreed it, the people spontaneously bestowed heavenly honors upon Anthony Mary Zaccaria. However, after this, it was determined that these honors should cease, solely due to the decrees of Pope Urban VIII, issued in 1634. Although these decrees could not, strictly speaking, be applied to Blessed Anthony, as they lacked certain essential elements, the Barnabite Fathers preferred to obey the decisions of the Holy See, rather than indulge in filial piety towards their Founder. However, with the permission of the Apostolic See, a new action was initiated to restore the cult. In the meetings of the Congregation of Sacred Rites, the following two questions

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were raised: "Is there a basis for restoring the aforementioned cult of the Servant of God in this case, and to what extent?" The first question was "delayed"; then, the matter was dismissed with the response: "Considering the particular circumstances of the case, it is advisable to petition the Most Holy Father for the restoration of the cult that was formerly granted to the Servant of God." Emboldened by this favorable outcome, the Barnabite Fathers again urged their legislative Father to decree the honors of the saints. Their prayers were not only favorably received by His Holiness, and approved by the Supreme Pontiff, but also granted an indulgence allowing the three miracles that would have been necessary for Beatification to also serve for Canonization. These, after examination, were found to be fully valid, and the Most Holy Lord, in a decree issued after the Ides of February of the following year, solemnly declared this. An exemption was granted from the requirement of a fourth miracle, since the case concerned the Founder of a religious order approved by the Apostolic See. After these events, the question arose: can the solemn Canonization of the Blessed proceed, given the approval of three miracles and the exemption from the fourth? This matter was discussed in plenary sessions on the 23rd of the previous month, in the presence of His Holiness, and the question was proposed by the Most Reverend Cardinal Lucido Maria Parocchi, Bishop of Oporto and of St. Rufina, and Vicar General in the City, and by the Relator of the cause; the Most Reverend Cardinals and Consultors gave their affirmative vote. Since the matter at hand was of the utmost importance, the Blessed Father judged it wise to postpone his judgment, in order to have time to pray to God. Today, on the first Sunday of Lent, after performing sacred duties with the utmost devotion, he ordered the Most Reverend Cardinals to be summoned.

[*Latin ed. p. 512*]

512 FROM the Sacred Rites, Caietan Aloisi-Masella, Prefect of the Sacred Roman Congregation, and Lucido Maria Parocchi, Relator in the cause, and also Reverend Father Gustav Persiani, exercising the office of Promoter of the Faith, and myself, the undersigned Secretary, and in their presence, solemnly declared: "May I proceed to the solemn canonization of Blessed Anthony Mary Zaccaria?" This decree was published for all to hear, and was recorded in the acts of the Sacred Roman Congregation, and letters apostolic were ordered to be issued under seal, concerning the solemn rite of canonization to be celebrated whenever desired in the Patriarchal Basilica of the Vatican, on the ninth of March, in the year 1697. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Roman Congregation. L. * S. DIOMEDES PANICI, Secretary of the Sacred Roman Congregation. QUEBEC. Concerning the beatification and canonization of the Venerable Servant of God, René de Laval, the first Bishop of Quebec. Reverend Father XAVIER CAZENAVE, Postulator of the cause for the beatification and

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canonization of the Venerable Servant of God, Francis de Montmorency Laval, the undersigned Cardinal, Prefect of the Sacred Congregation of Rites, in the place and by order of the Most Reverend and Right Reverend Lord Cardinal Lucido Maria Parocchi, Bishop of Porto and Santa Rufina, Relator in the same cause, in the ordinary assembly of the aforementioned Sacred Congregation, convened at the Vatican on the date indicated, and in accordance with the special provisions of Our Most Holy Lord Pope Leo XIII, issued in the years 1878 and 1895, proposed the following question for discussion: "Does it appear to be established with validity and relevance that the Apostolic process, constructed upon the fame of the sanctity of life, virtues, and miracles of the aforementioned Venerable Servant of God, is sufficient in kind and effect for the matter under consideration?" Furthermore, the Sacred Congregation, after careful examination of all matters, and after hearing Reverend Father Gustavo Persiani, exercising the office of Promoter of the Faith, decided to respond: "Affirmatively, or it is established." On the 5th of January, 1897. Having related all of the above to His Holiness, Our Most Holy Lord Pope Leo XIII, through the undersigned Cardinal, Prefect of the Sacred Congregation of Rites, His Holiness considered the judgment of the aforementioned Sacred Congregation to be ratified, and confirmed it, on the eleventh day of the same month and year. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Roman Congregation. L. * S. DIOMEDES PANICI, Secretary of the Sacred Roman Congregation.

[*Latin ed. p. 513*]

By the Apostolic Letters of Our Most Holy Lord Leo XIII, by Divine Providence Pope, the Vatican Seminary is canonically established with its schools. It has always been considered by the Roman Pontiffs to be a most important duty to carefully instruct young clerics in the hope of the priesthood, and for this reason, especially in the City, they have either founded new institutions or greatly improved existing ones. In the same way, from the very beginning of Our Pontificate, without sparing any effort or expense, We have devoted all Our care, study, and diligence to this matter. We considered it fitting and proper to dedicate to this purpose the sacred Vatican Seminary, located near the venerable Basilica of Saint Peter and almost within the sight of the Pope. This Seminary, indeed, was founded by Our predecessor, the blessed and remembered Urban VIII, with Apostolic Letters issued on the 25th of October, 1636, and from its very beginning has received new and increasing benefits from the Roman Pontiffs. For Urban VIII himself assigned to it an annual sum of four hundred gold florins from the compulsory payment of one thousand three hundred florins paid to that time by the Vatican Chapter to the Roman Seminary; to which sum was added an annual sum of two hundred gold florins, which the Chapter, by pontifical authority, established to be paid perpetually from its own funds

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to the same Seminary, and whatever else might be given in the future. The Seminary was made subject to the authority of the Cardinal Archpriest and the Vatican Chapter, to whom the right to admit students was granted, and who were granted immunity from the jurisdiction of the Cardinal Vicar of Rome for all persons and all property pertaining to the Seminary. In addition to these privileges, indulgences, and benefits, it was granted all those things with which other Seminaries enjoy, according to the laws of the Council of Trent, and also those things which were proper to the Roman Seminary. Then Alexander VII and Innocent XI issued laws by which the Seminary was to be properly governed. Benedict XIII assigned a house, constructed with mosaics, for the purpose of studies, with two annexes and a garden. The donation of the Cardinal Duke of York, the Archpriest, was confirmed by Clement XIII. Gregory XVI increased the resources and benefits of the Seminary, as noted in Ada, Vol. XXIX, page 345.

[*Latin ed. p. 514*]

514 APOSTOLIC LETTERS concerning the perpetual endowment of four hundred students from the revenues of the Pii Operis Caritatis. For the final accommodation, Pope Pius X considered during the summer months, granting the students the use of a part of the house of the Reverend Fabricae, near the Altar of the Heavenly Temple, until more suitable buildings were available. Although our predecessors had sufficiently provided for the Vatican Seminary, the present circumstances nevertheless seemed to require further measures, now that we had been brought to the Chair of Peter, as God willed. For both the just number of students was desired, and a more suitable arrangement of studies was needed. Therefore, having consulted with men chosen from the Vatican Chapter, and together with them, the Cardinal Archpriest, regarding the state of affairs pertaining to the Seminary, we immediately considered the convenience of accommodation and the instruction of the students, as well as the number and utility. First, we ordered that the buildings be expanded and adapted, especially for the use of classrooms, and for this purpose, we assigned five thousand Italian silver coins to be paid to the Reverend Fabricae. Furthermore, we decreed that the revenues of the Fabricae curators, which they had previously enjoyed, should be ceded permanently to the Seminary, except for six thousand five hundred Italian silver coins, which revenues, together with the revenues of the Borromeo legacy, were to be used for the construction of the buildings, as we have said. We granted permission to draw an ounce of water from the channel of the Fontis Aquilonis, in the Vatican gardens, to be conveyed to the Seminary. We also took care to construct a passageway to the temple of Santa Marta, so that it could be used as a chapel. Finally, we provided abundantly for the sustenance of the students. With these matters arranged, we turned our attention to forming the minds of the young men towards virtuous conduct and solid, wholesome instruction. Therefore, it was our

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primary intention that teachers be chosen who were publicly qualified to teach, so that both the students of the Seminary, and the clerics of the Basilica, and external young men, to whom we also provided access, would be made suitable for a just examination, both in the Gymnasium and in the Lyceum. Therefore, we appointed five priests of the Vatican Basilica to the teaching staff, two of whom were of higher rank, and the others of lower rank, who would enjoy these benefits in place of the burden of the choir. Soon after, sixteen thousand Italian coins were established, and a theater of physics and natural history was added to the Lyceum. Finally, philosophy was restored, and

[*Latin ed. p. 515*]

• APOSTOLIC LETTERS: Having completed a period of four years dedicated to the study of sacred disciplines, we have established a residence, fully equipped and prepared for all needs, which is no less abundant in comforts than it is in the number of young men. Therefore, we have ordered that Bishops, especially those nearby, be invited in Our name, so that they may send to the Vatican Seminary those clerics whom they are unable to receive in their own seminaries, which may be closed, or who lack instructors in accordance with the norms of civil law, so that they may be educated under Our watchful eye. We have approved and confirmed that, as the Cardinal Bishop of Portus and S. Rufinae had agreed, a certain number of students would be educated in this very Seminary at his expense, and that three of them would be granted free places. Furthermore, we have provided three free places for young men from Carpineto, having given fifty thousand Italian silver coins for that purpose. We have decreed that seventeen and a half places shall be free, partly from the revenues of the Reverend Fabric, and partly from the endowment of Borromeo. With these additions, the Vatican Seminary has been increased and restored to a much better condition, and there remains almost nothing to be desired, except that an Apostolic document be issued, by which the Seminary, although already canonically erected, as We have said, by Our predecessor, the blessed and remembered Urban VIII, may receive a new canonical force and validity, and that the Lyceum and Gymnasium, together with the schools of Philosophy and Theology, may be canonically erected for the first time by Our authority. Therefore, we, eager to further this work and to show a new testimony of love for the Vatican Seminary, hereby confirm with the authority of these present Letters, the old erection and all the rights, privileges, and prerogatives previously granted to it, and we adorn it with the Pontifical name and title. Furthermore, for the glory of God, for the increase of the Catholic religion and doctrine, and for the honor, utility, and benefit of the city, we erect and establish within this very Seminary, according to canonical norms, a Lyceum and Gymnasium, together with schools of Philosophy and Theology, and we grant to them all the rights,

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privileges, and prerogatives proper to such colleges; and, in particular, so that their students may be able to attain the degrees of magistri and other academic grades in sacred disciplines, according to the customary statutes and laws of universities, as they are called. In order, however, to ensure the security and benefit of this Our Institute...

[*Latin ed. p. 516*]

516 APOSTOLIC LETTERS: For the better ordering of affairs, the buildings at Santa Marta, which the Seminary, along with its schools, presently uses, the ownership of which previously belonged to the Reverend Fabric, are hereby assigned to the same Seminary, together with the aqueduct of Paulina; and We declare and decree that these buildings are, by the force of the present Letters, permanently ceded to it and transferred to its rights. Furthermore, We also assign to the same Seminary the church and monastery of Santa Marta, the use of which had been granted by Pope Pius IX of blessed memory, as well as the rural house purchased in the Sabine region, which has been enlarged at Our expense, together with the adjoining church of Saint Aegidius. We hereby establish three free places for young men, drawn from Our own resources, for others from the revenues of the Reverend Fabric, and fourteen half-places from the Borromeo endowment, and We confirm by these same Letters that this arrangement shall be observed perpetually, and We command that it be maintained. Furthermore, We hereby confirm and ratify, by Our Apostolic authority, the endowed funds which We have assigned to the Lyceum, the Gymnasium, and the teaching of Theology, whether derived from the five priests established in the teaching staff of the Basilica of the Vatican, or from certain pensions established for the priesthood, or from the revenues which the Reverend Fabric's administrator previously enjoyed. We command that all these things be diligently observed, which We have deemed necessary by these Our Letters for the prosperity and preservation of the Seminary and its schools, and in particular, that the following provisions be observed:

I. The Cardinal Archpriest of the Basilica of the Vatican shall be the head of the Seminary and its schools, and shall possess the same authority therein as a bishop in his own diocese.

II. A Canon of the Vatican shall be chosen by the Supreme Pontiff to be the Prefect of the Seminary, and shall remain in that office as long as it pleases the Supreme Pontiff.

III. Four men shall be appointed to manage the affairs of the Seminary, in accordance with the laws of the Council of Trent, and these shall be chosen from the Canons of the Basilica of the Vatican by the Pope, with the exception of the Canon Prefect and the Cardinal Archpriest's Vicar, one of whom must necessarily participate in this administration, and the other shall serve as the Cardinal Archpriest's substitute in his absence.

IV. When the Rector of the Seminary is to be replaced, the Cardinal Arch-

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priest, after hearing the advice of the Canon Prefect, shall propose several priests who are deemed suitable for that office.

[*Latin ed. p. 517*]

517. Apostolic Letters, so that from among them the Supreme Pontiff may choose one whom he shall appoint as rector of the Seminary, with the authority and power to govern its students. V. The Cardinal Archpriest, after consulting with the Canonical Prefect, shall appoint two suitable priests as assistants and vicars to the rector, so that the rector may more efficiently and usefully perform his duties, both in matters concerning the discipline of the students and in those concerning the administration of the Seminary. VI. With regard to the spiritual care of the students, the same Cardinal Archpriest, after consulting with the Canonical Prefect, shall choose a priest to be the master of piety and the ordinary confessor, who shall reside within the Seminary buildings, and who shall diligently and prudently strive to promote the virtue and religion of the students, and shall perform all the duties of a parish priest. VII. The Cardinal Archpriest shall have the right to confer the sacred Orders not only upon his own clergy, but also upon other students, with the consent of the Bishops, and this shall be done in the places within his jurisdiction, including both the urban and the rural Seminary. VIII. He shall also have the power to confer academic degrees, such as the laurel and other academic titles, upon students of sacred disciplines, whom, after having demonstrated their suitability through their studies, he shall have determined to be worthy. IX. Doctors and lecturers, especially for the more advanced disciplines, shall be proposed by a group of men from the Vatican Chapter, who are concerned with the affairs of the Seminary, under the presidency of the Cardinal Archpriest; and this group shall report to the Pope, to whom the selection shall belong. X. On feast days and other days of religious observance, all the students shall, as is customary, attend the Basilica for the sacred ceremonies. On other feast days, as determined by the Prefect, the same students, except those who customarily participate in the sacred ceremonies in the Basilica, shall serve at the sacred ceremonies in S. Marthae; and they shall also be properly instructed in the most sacred ceremonies and pious discourses. These things we wish and decree, and therefore we ordain that these Our Letters shall always be firm, valid, and efficacious, and shall have and obtain their full effect, and that they shall fully suffice for those to whom they pertain, or who may pertain to them at any time. We also wish that copies of these Letters, even printed ones, shall be provided, but that they shall be signed by the hand of Our Notary, and sealed with the seal of a man of established standing in ecclesiastical dignity, as is customary.

[*Latin ed. p. 518*]

518. Let the faith be held which, by the signification of Our will, is demon-

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strated in these present documents. Therefore, no man shall be permitted to infringe this page of Our constitution, ordinance, or will, nor to dare to contradict it with reckless audacity. But if anyone should presume to attempt this, let him know that he will incur the indignation of Almighty God and of the blessed Apostles Peter and Paul. Given in Rome, at Saint Peter's, in the year of the Incarnation of the Lord one thousand eight hundred and ninety-six, on the fifteenth day before the Kalends of February, in the nineteenth year of Our Pontificate.

A. A. PANICI CARD. MACCHI

Subdatarius

VISA DE CURIA

I. DE AQUILA

E VICECOMITIBUS

Loco f& Plumbi
Reg. in Secret. Brevium.

I. CUGNONIUS

EX S. CONGREGATIONE CONCILII

VARSAVIENSI, SEU PARISIENSI.

NULLITATIS
Die 25 Ianuarii 1896.

22 MATRIMONII.

Augusti et 12 Decembris 1896.

Sess. 24 de ref. matr. cap. 1.

Johannes Antonius Baro and Maria Sophia, both of noble birth and originating from the city of Warsaw, were joined in a conjugal bond on the first day of January, 1875, in the church of Saint Sulpice, in Paris. It does not appear, beyond all doubt, whether the spouses resided in Warsaw at the time of the initiation of the marriage.

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CONCISE SUMMARY OF THE FACTS.

[*Latin ed. p. 519*]

WARSAW. OR PARIS. 519. For, for one reason or another, families, moving from place to place, have, over time, settled in several locations, sometimes acquiring a dwelling there, as if making it their home. The proceedings concerning the marriage began in the year 1873 at the spa known as "Spa," when John Anthony was 22 years old, and Mary Sophia was 20 years of age. The betrothed, captivated by mutual love, desired to celebrate their marriage as soon as possible; therefore, in order to overcome certain objections from the man's parents, they decided to celebrate the marriage in Dresden. However, they abandoned this plan when the parish priest, who is the only Catholic priest in that city, declared that he could not join them in marriage unless they had resided in his parish for at least six weeks beforehand. Not agreeing to this condition, the betrothed went to Paris, where, on December 31, 1874, in order to legally marry, they obtained a false certificate of residence for six months, and subsequently, on January 2, 1877, they entered into a marriage contract in the parish of Saint Sulpice. This marriage, which did not have a happy outcome, was challenged, due to the vice of clandestine marriage, the man alleging that neither he nor his bride had, in accordance with the mind of the Council of Trent, a true domicile, necessary for the proper jurisdiction of the parish priest in the parish of Saint Sulpice. This petition was brought forth by the man in the year 1883 before the Warsaw court, when the civil court of Krakow, at the request of the bride, had, in May 1883, decreed the separation of the couple and had entrusted the son they had already had to the guardianship of the mother. For she confessed that she had long known that the man was involved with another woman, from whom he had also had children; therefore, after the death of her grandfather, who had bequeathed a large portion of his estate to this grandson, in order that the son would not come into the possession of the man's goods and imitate his bad morals, Mary petitioned the court and obtained a decree that the son be claimed by her for her guardianship, as was done.

[*Latin ed. p. 520*]

520. VARSOVIAN. OR PARISIAN. The learned author, in his *Synopsis Disputationum*, notes that, according to chapter 5, and although the Holy Council of Trent, Session 24, Decree 1, states that marriage cannot be validly contracted unless before one's own parish priest, or another priest with the license of the parish priest or Ordinary, the Tralatian jurisdiction holds that the proper parish priest is only the parish priest of the domicile or quasi-domicile; and that a quasi-domicile is not acquired by any mere sojourn or residence, but only by that which is accompanied by the intention of remaining in that place for the greater part of the year. Then, citing the

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authority of canonists, he states that the Most Holy Congregation of the Holy Roman Church and the Universal Church had already definitively spoken on this matter, and that it responded on the fourth day of May, 1877, to a request from the Matutina Synod, with these words: "The proper parish priest must be the parish priest of the domicile or quasi-domicile of the contracting parties; and in order to determine the quasi-domicile, the rule set forth in Instruction No. 4, dated June 7, 1867, should be observed, and should be transmitted to the Bishops of Ireland." Furthermore, in the aforementioned Instruction, it is written: "In order to establish a quasi-domicile... two things are required: namely, residence in that place where the marriage is contracted, and the intention of remaining there for the greater part of the year." Moreover, with regard to the facts of the case, he observes that it is clear that neither John Orator nor Mary resided in Paris, nor did they have the intention of residing there, not even for a notable part of the year, at the time of the celebration of the marriage. On the contrary, he argues, they presented themselves in Paris at that time solely for the purpose of contracting the marriage there as soon as possible, and with the intention of leaving immediately after the celebration of the marriage, as indeed they did. Thus, the advocate responded under oath to the judge: "The marriage was to take place in Dresden. The marriage did not take place in Dresden because the pastor of the only Catholic parish in Dresden required a stay of six weeks from the moment the request to marry was made."

[*Latin ed. p. 521*]

WARSAW. OR PARIS. 521 was addressed to him. We were determined to marry in 1874. The acceptance of this condition imposed by the Curé would have postponed the marriage to 1875, to which we were absolutely opposed. We did not know that we could have requested a dispensation from Warsaw. In Dresden, my wife, her mother, her sister, and I remained until December 8, 1874, from there we departed for Paris, where we arrived on the 12th. I stayed there until January 2, 1875, at the hotel at 33 rue de Tournon. It was absolutely decided that we would leave Paris immediately after the marriage, with the intention of not returning, at least not to settle there.

Furthermore, the Patron notes that Mary herself admits that her cause is greatly opposed, and that she denounces it. All of these things, and other matters of the utmost importance, are most abundantly confirmed by witnesses, without any exception. Among the witnesses, the Advocate especially mentions the Reverend Father Panis, the first Vicar in the parish of Saint Mary Magdalene. After the Patron noted that these facts were confirmed not only by the accuser, but also fully by the bride, he observes that the testimony of Father Panis is to be considered very reliable, as the Ordinary of Paris wrote to the Sacred Congregation: "It seems that his

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testimony should be given great weight, not only because of his practical knowledge, but also because of his clear recollection of the events that occurred at the time the marriage was celebrated." And when this priest, being questioned by virtue of his office, what he thought about the case, he answered without hesitation: "I believe the marriage to be null due to lack of jurisdiction, because the man did not have a domicile or quasi-domicile in Paris, and the woman was not *vaga* in the canonical sense of the word." The accuser diligently notes that each and every thing that the accuser and the woman opposed asserted under oath, and that the sacramental witnesses demonstrated, are confirmed by written documents, and by those documents which are irrefutable. Indeed, it is certain that in the very year in which the marriage was begun, and precisely from the month of April...

[*Latin ed. p. 522*]

522. VARSOVIA. OR PARIS. Until November 1874, he had continuously resided, not in Paris, but in his homeland, that is, Warsaw, or in the district commonly called "Somianka," as evidenced by the authentic testimony of the Prefect of the Warsaw Questura. Indeed, this is confirmed by the testimony of the very archiepiscopal curia of Warsaw, which wrote: "that the author had resided for several months before the marriage in the family estates in the district of Pułtusk." Furthermore, that his fiancée and her mother had not resided in Paris, in the parish of Saint Sulpice, where the marriage was celebrated, before December 10, 1874, but rather in Dresden or elsewhere, is demonstrated by the Advocate, first, by the testimony of the Director of Police of Dresden, and second, by the written testimonial of the Reverend Maria Gonzaga Homell, Prefect of the "Neuilly (Seine)" Institute, in which the fiancée was received for several months, and finally, by numerous letters sent by her during that time from various places, as shown by the printed table above, to the Advocate residing in Poland. Moreover, the intention was not to reside in Paris for a significant, let alone a major, portion of the year, but rather to leave immediately after the marriage ceremony had been completed, and, after a honeymoon, to move to the city of Halle, as is evident from a letter given by the fiancée to the groom at a time not under suspicion, that is, on June 11, 1871. Certainly, in the aforementioned letter, the fiancée seeks to persuade the groom to accept less reluctantly the condition imposed upon her by her father, namely, to pursue studies in agriculture after the marriage, at the University of Halle. Because it might present a difficulty that the woman from Aversa stated, "we returned to Paris shortly before the celebration of the marriage, and we were domiciled at the Hotel of Emperor Joseph II, on Rue de Tournon, with the intention of acquiring the right of parish," and "we intended to remain in Paris for the time necessary to obtain the right of parish"; the

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Advocate, from the context of both passages,

[*Latin ed. p. 523*]

WARSAW. OR PARIS. In a second examination, to which the aforementioned woman was subjected by order of the Sacred Congregation of the Council, it appeared that she intended by those words to signify nothing other than that she, along with her mother and fiancé, had arrived in Paris at that time solely for the purpose of avoiding the delay required by the parish priest of Dresden, and to celebrate the marriage there as soon as possible. Indeed, she herself stated: "We left Paris immediately after our marriage, and did not return there except for a few days." And to question number 7, she had already replied: "The marriage did not take place in Dresden, because it was said to Mr. du Puget-Puszet that it was necessary to reside there for a number of months, the exact number of which I do not recall, in order to acquire the right of the parish. Wishing not to wait so long, she asked my mother that we return to Paris, believing that we would find our right of the parish there." In another examination, the aforementioned woman clarified her words as follows: "What I know is that my mother did not move into the hotel 'Empereur Joseph II' on rue de Tournon with the intention of living there for the time necessary for us to be married in the parish of St. Sulpice." The advocate, however, believes that it is clearly evident what reason led her to believe that it was easier to acquire the "right of the parish" in Paris than in Dresden, if one considers the following words of the fiancée: "I based my opinion on the fact that for 11 consecutive months I had lived in Paris, of which 8 months were under the parish of La Madeleine and 3 months under the parish of Neuilly, at the convent of the English Ladies, while I had only spent 5 or 6 weeks in Dresden. Moreover, this is what Jean explained to my mother, who herself had lived with her parents in Paris for more than 10 years and had not left that legal domicile for 8 months." Since the couple stayed in a boarding house in the parish of St. Sulpice, the advocate notes that the Sacred Congregation of the Council and the Sacred Roman Rota have repeatedly declared that, as is commonly said, one does not acquire a quasi-domicile anywhere if one does not reside there in the manner of inhabitants, that is, in the manner of those who truly reside in that place.

[*Latin ed. p. 524*]

524. In VARSAVIA, or PARIS, which are also called domiciles: as the Most Holy and United Church itself authentically transmitted in the aforementioned Instruction, section IV, dated June 7, 1868, with these words: "It is also manifest that an actual residence is not suitable for establishing a quasi-domicile, if someone resides in that region in the manner of a vagrant and a traveler, and not truly and properly residing, as is customary for others who have a true and proper domicile in the same place." However, the

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Advocate proves that, in this case, no delegation took place, based on the testimony of the Sacred Panis, who testified: "I have heard of no permission, no delegation from Warsaw, nor from elsewhere." He also cites the Warsaw Tribunal, which, after stating that the matter had already been addressed even with the Bishop of the Diocese of Płock, in which is located "Somianka," solemnly declared: "After carefully examining the archival records... no record was found of any delegation, either from the Ordinary or from the parish priest of the sponsors." Then, the Archbishop of Warsaw himself, in letters addressed to the Ordinary of Paris, dated July 17, 1893, wrote: "First of all, it is established that no special and explicit delegation was issued by the Warsaw Curia." Furthermore, contrary to the argument of the opposing party, the following words do not hold true: "Monsieur Jean obtained authorization from his priest, either from Warsaw or from Somianka"; indeed, even when questioned more closely by the eminent Defender of the Marriage at the Sacred Congregation, regarding those very words, she was forced to admit: "Perhaps I confused the publication of the banns with a special authorization... I cannot affirm or recall whether such an authorization (from her priest) existed or not." Finally, the Advocate contends that the marriage cannot be valid under the law of vagrants. He believes that it is clearly established that the Orator was not a vagrant, after what has been explained above and what is widely present in the summary. For the same reason, he believes that it is unnecessary to prove that the other party was not a vagrant.

[*Latin ed. p. 525*]

WARSAW. OR PARIS. 525, the bride. For she testified in court: "I had never left the home of my mother." And when questioned by the judge: "What was the legal domicile of your parents?" she replied: "The legal domicile was Warsaw." The plaintiff presents witnesses who assert this, including the priest Joseph Panis, who testified: "I remember that Miss and her mother had their domicile in Warsaw." Furthermore, he presents documents from which it is clear that the bride's mother, still listed among the permanent residents of this city, had not sold a certain property (immovable estate) located in Warsaw, which she had acquired long ago from the inheritance of her brother, but rather, just a few years before her daughter's marriage, she had redeemed it from the co-heirs for the sum of 3,050 rubles, and she kept it until her death, so that half of the same property later fell to her daughter.

OBSERVATIONS OF THE DEFENDER. REGARDING THE VALIDITY OF THE MARRIAGE.

On the contrary, the Defender of the Marriage argues against the plaintiff's intention, claiming, first, that neither John nor Mary were, at

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the time of the marriage, proper parishioners outside of Paris, since both were legally married as vagrants, according to the law. To clearly prove this in law, the plaintiff explains the reasoning; citing, among others, Prosper Lambertini, who in his 33 notifications, number 10, states: "It is a certain rule that the parish priest of vagrants is that of the place where they are currently located, whether it be one of the contracting parties who is a vagrant... But sometimes there is confusion, taking the pilgrim for a vagrant, which is not true, for the vagrant is he who, having left his domicile, goes in search of another where he may settle, according to the text in L. Eius § Celsus ff. ad municipalem, where it is written: 'I also believe that this can proceed, if someone, having left his domicile, navigates, or travels, seeking where he may find lodging and where he may settle, for I consider him to be without a domicile.' - and the pilgrim is he who travels, but with the intention of returning to his former domicile." Anthony Ballerini, notes to question 487, compendium of Theology.

[*Latin ed. p. 526*]

526 WARSAW. OR PARIS. The moral theologian, in volume 2, states: "Benedict XIV defines a 'vagabond' (Instr. 33, no. 10) as one who, having left his domicile, seeks a residence in foreign lands; this must be understood whether he has determined where he will reside, or whether he has not yet determined; in either case, he lacks a domicile. Furthermore, it is not necessary that he seek a residence; indeed, he is even more clearly a 'vagabond' if he has no certain and permanent residence anywhere, nor does he intend to have one. Moreover, with regard to the present matter, in order to be considered a 'vagabond' in relation to a parish, it is not even necessary that he seek a domicile in a distant or foreign region; it is sufficient that, having left his former parish, he has not yet settled in another residence, because in that case he is truly without a parish, having lost the former and not yet acquired another. Therefore, 1° he who, having left his parish, has not yet found a house in which to live, and is meanwhile staying in some place as a guest, is a 'vagabond'; 2° and even if he has found a house in which he will live, but he is staying elsewhere while the house found is being prepared for its former occupant, he is equally a 'vagabond' with regard to the parish; 3° and so also, if he has come to a city and has not yet decided where he will live, he will be counted among the 'vagabonds' or those without a parish." With these principles of law in mind, the advocate, Vinculi, believes that it has been demonstrated that John was not a member of a particular parish, either his own or that of Mary, in Poland at the time of the marriage. Regarding John, it is stated that he was born on May 13, and was baptized with water on May 22 of the same year in the parish of Saint Mary in Warsaw. However, according to the record, on June 13, 1852, John's father's domicile and, therefore, John's own domicile, was not in the Warsaw parish of Saint Mary, nor in the Warsaw diocese, but in the

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place called "Somianka." Indeed, the region of "Somianka" has nothing in common with the Warsaw parish church of Saint Mary, nor with the Warsaw diocese, because the place commonly called "Somianka" is located within the territory of the diocese of Płock. Finally, the advocate states that it is certain that John...

[*Latin ed. p. 527*]

WARSAW. OR PARIS. 527, having resided with his parents since the year 1864 in Lutetia, Paris, for the purpose of studies. Indeed, Mary swears: "Monsieur Jean had lived with his parents in Paris for more than 10 years at the time of the marriage celebration, and had not left that legal domicile for 8 months." This is confirmed by the Priest Panis, first vicar of St. Madeleine, most devoted to John, under oath. On April 10, 1874, John bid farewell to his parents in Lutetia and departed for the place called "Somianka." The speaker continues, the parents, however, left Paris approximately three months before the celebration of the marriage, or eight or nine months, if John speaks truthfully, since he says: "In April 1874, my parents definitively left Paris, where they have never returned since." Therefore, the Defender of the Bond concludes, for at least ten years, when the marriage was celebrated, John and his parents resided in Paris, and certainly sought a permanent domicile there. Moreover, the Canon Joseph Dulong swears: "Indeed, the family of John certainly had a domicile in Paris; Monsieur Jean lived with his family, not in a hotel, but in a richly furnished apartment." And this is not denied by the Priest Joseph Panis himself, but rather confirmed, who says: "At the time of the marriage, the parents certainly no longer had a domicile in Paris; they had left Paris to return to Poland and settle there permanently. They had even taken all the furniture with them." The speaker, noting that to acquire a domicile, two things are required and sufficient, namely, the fact and the intention, states that it has been ascertained that they resided in Lutetia, Paris, for more than a decade: and that they left Paris, not because they had planned it from the beginning, but due to an unforeseen circumstance, namely, a change in the form of government. Indeed, Mauritius Coste, a friend of John, reports: "John's father did not want to stay in a country where he no longer felt safe, he said, and undoubtedly, jokingly, in safety because of the new form of government."

[*Latin ed. p. 528*]

528 WARSAW. OR PARIS. Furthermore, as the Advocate points out, no one would dare to register a quasi-domicile for John and his parents. The parents brought the son from Paris, where he was to be engaged in the rudiments of studies, the humanities, and sciences. This, of course, certainly does not take a short time. Then, the tutor, Vinculi, reports that John, before his temporary residence elsewhere, left "Somianka" two months before the marriage, with the intention of traveling to the Prussian state commonly

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called "Halle," and that he persevered in this intention on January 2, 1875, while in Paris, where he entered into the marriage bond. And indeed, the Advocate continues, after November 11, 1874, John no longer visited the region of "Somianka"; but, after the marriage, he went to Prussia, with no intention of visiting Poland, to the state of "Halle," where he resided with his wife for a year and a half, that is, until the month of August 1876: at which time the spouses, John and Mary, went to Cracow, and there they lived their conjugal life until the year 1879. Therefore, the Advocate argues, during the time that John was in Paris, where he married Mary, he was not subject to the laws of the Council of Trent, because he lacked a proper parish priest, nor to the most obvious provision of Roman law, *L. Eius, § Celsus, ff. ad municipale iii*. Nor should it be overlooked, according to the Advocate, that the Warsaw ordinary, while dispensing with two banns of proclamation, addressed the Warsaw parish priest of the church called "of the Transfiguration of Our Lord" in this way: "For reasons that have been explained to us and that we have approved, we grant and concede to you or to any other priest the faculty of uniting in marriage and blessing, or of uniting in marriage and blessing, Jean Antoine du P, a bachelor, your parishioner, and Sophie Félicie M., a single woman from the Diocese of Paris." For the Archbishop himself of Warsaw used the words: "your parishioner," which should not be held in high regard. For he says: "In this Indult,..."

[*Latin ed. p. 529*]

WARSAW. OR PARIS. 529, in which only the words "Dispensandus super duabus bannorum proclamationibus" have essential force, while everything else constitutes an elaboration of this principal act of ordinary jurisdiction and is expressed for the sake of stylistic completeness. Furthermore, the Advocate notes that if the words "votre paroissien" are to have effect, then the words "Nous donnons et concédons à vous ou à toute autre Prêtre, quelconque faculté de pouvoir unir en mariage et bénir Jean et Sophie du Diocèse de Paris" must not be devoid of meaning. Moreover, even if it were alleged that John did not have a certain and defined domicile, nor any intervening ordinary delegation, nevertheless, according to the Advocate, it does not necessarily follow that the marriage could not have been validly contracted according to the law of vagrants; because it seems to him that Mary also lacked a proper parish. Indeed, neither the spouses nor the witnesses indicate in which parish Mary, or rather, her mother, had a domicile or quasi-domicile, if we except the parish of Saint Sulpice, when the marriage took place. It is not sufficient that the witnesses and Mary herself object to a Warsaw domicile: but the parish must be specified. But, the defender of the marriage bond argues, if any parish was Mary's own, when the marriage began, then the parish priest of Saint Sulpice was her own. For it is certain that Mary's mother returned to Paris, certainly before

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December 25th, and moved her household (”lares”) within the boundaries of the parish of Saint Sulpice, that is, to ”rue de Tournon 33, à l’Hôtel de l’Empereur Joseph II.” Furthermore, it is not less certain that Mary’s mother remained there for at least six months, because this is affirmed by John under oath. It cannot be said that the mother remained in Paris for a long time because of a change of plans after the marriage. For a change of plans is not presumed, but must be proven, and it was not new to her, nor would it have been unpleasant to her, to remain in Paris for a long time, because Mary’s mother knew this well, since she had already spent more than a year in Paris. For this reason, it was decided to celebrate the marriage in Paris, and not in Dresden, as soon as the betrothed were considered ”Acta,” Vol. XXIX, p. 345.

[*Latin ed. p. 530*]

550. In Warsaw, or Paris, the necessity of establishing a domicile had arisen. Therefore, the Defender of the Marriage does not doubt that Mary, the mother, who was distinguished by Christian morals, when she heard from ecclesiastical men that a continuous residence of several months was required for the validity of marriage, did not intend to remain in that parish for so long. Wherefore, when questioned by the judge: ”How long did you intend to remain in Paris?”, Mary clearly replied: ”We intended to remain in Paris for the time necessary to obtain the right to be parishioners.” Furthermore, the Orator continues, the anxiety of religious souls pricked the priest Joseph Panis, who was to celebrate the marriage, so that he proposed, on the day before the celebration of the marriage, to resolve the question of residence. This proposal, the Vicar, Mr. de Montelar, seems sufficient to the Orator, so that he need not even consider, either before or after, whether the priest Panis, having been led to suspect the matter of residence, had inquired whether either of the betrothed possessed or lacked a parish proper, which would be necessary for establishing a quasi-domicile. Moreover, it is certain to the same Defender that the necessity of a quasi-domicile in the parish of Saint Sulpice was impressed upon Mary, and that she was persuaded to follow this advice. Therefore, the Orator argues, the Ordinary of Warsaw, in the aforementioned dispensation from banns, affirms that Mary belongs to the diocese of Paris, ”du Diocèse de Paris.” Which he was obliged to affirm, because the betrothed had stated this to the Warsaw court. With these facts established, the Patron proceeds, it could have been freely granted that neither John, but also Mary, had a proper parish elsewhere. Indeed, if Mary’s mother entered the parish of Saint Sulpice before the celebration of the marriage with the intention of remaining there for a considerable time, then the parish of Saint Sulpice, when the marriage took place, was the proper parish of the mother, and therefore also of the daughter. Because John’s Advocate points out that a domicile could not have been established by Mary’s mother while staying

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in a lodging, the tutor of the marriage bond replies that not every marriage, especially in these days, is vitiated by the defect of nullity if...

[*Latin ed. p. 531*]

WARSAW. OR PARIS. 551. It is clear that residing in a public inn for a considerable time would be unsuitable for properly celebrating a marriage; but nothing is more established in law than that residence in any private dwelling, even if accompanied by the transportation of belongings, is considered only in doubtful cases to elicit presumptions; but when it is established that there was residence and an intention to remain for a considerable time, the presumption must yield to the truth, even if it is in an inn, even if the belongings were not transported. In a more difficult case, the Rota, before Merlin, in the matter of a marriage of December 10, 1625, in Toledo, declared: "It does not impede that, from the aforementioned lack of transportation of belongings, and from the return and permanence, especially when joined with a reconciliation with Captain Didacus (with whom she previously resided along with her sister), it may appear that Lady Mary never had the intention of leaving her former dwelling, or at least that she abandoned it later, and again resumed the will to remain in the same Captain's house (where her sister remained). Because the witnesses say that the belongings were not transported because the house of Quintilius (to which Lady Mary had moved) was not large enough, and for the same reason Lady Mary could not keep servants in it, it is not necessary that anyone should take their belongings with their family; for these and similar considerations are taken into account in doubt to elicit presumptions, but on the contrary, when there is an open declaration of intention, either through words frequently and clearly repeated, or through the fact of the person's removal, even if not with all their belongings, at least with clothing, linens, and women's adornments." Finally, the Advocate points out that, from the fact that Mary followed John immediately after the marriage began, outside the parish of Saint Sulpitius, no detriment to the validity of the marriage is apparent. If this were so, girls who live with their parents, or girls who serve men residing in another parish, would not be able to validly marry before their parents or the master had remained in the parish where the marriage is celebrated for more than a part of the year.

[*Latin ed. p. 532*]

VARSOVIA. OR PARIS. Up to this point, concerning point 1: Whether the marriage is null, and furthermore, the question was raised: How should provision be made for the children and their mother in this case. It has already been demonstrated in the facts that Mary conceived children from her marriage with John. There is no doubt about the legitimacy of the firstborn, but suspicion is raised about the second child. However,

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the wife's advocate states that, since 1878, the mutual love within the marriage was disturbed; the cause of the discord was a certain niece of the Baron, who aroused old and suspicious relationships. From that time, it is said, the Baron remained for five full years in an illicit relationship with this woman, who had fled from her husband, partly in Vindobonae, and partly in Geneva, and rarely visited his legitimate wife, who was living in Cracow with her parents. Furthermore, the advocate continues, these illicit relationships with the concubine were not falsely or rashly divulged, for the Baron himself certainly received knowledge of these things, as evidenced by the fact that in his last will and testament of November 1882, when he died, he appointed his nephew Lewis as the heir to the greater part of his property, and not this child's father, and he added a clause separating the legitimate son of the Baron from the adulterous ones. Subsequently, anger arose, and the father fruitlessly attempted to invalidate the aforementioned will in favor of his son. Furthermore, the attempt to remove the son from the mother's tutela was also unsuccessful before the Civil Tribunal, the judge having entrusted the son to the mother according to the decree of May 2, 1883. The husband's insinuations, which are alleged to relate to the child born four months after the decree of separation, are excluded by the advocate, considering the wife's religious devotion, and are completely eliminated in the facts. Indeed, as the Professor of the Jagiellonian University, and also Canon and former Rector, states: "The entire city can be said to have risen up in defense of the innocent Baroness, and in condemnation of her perverse husband. The Most Reverend Paul Popiel, brother of the Archbishop, head of Polish nobility, a man of outstanding virtue,..."

[*Latin ed. p. 533*]

WARSAW, OR PARIS, 553. Although neither related nor a friend of the Baroness, he himself took up the defense of this child, impugned by the husband, and Cardinal Dunajewski granted permission for it to be solemnly baptized at home. In this delicate matter, the Advocate insists, and a significant distinction arises, as the Baroness, in her examination, declares with religious fervor: "I submit absolutely to the decision of the Holy Church." Again, citing the date of March 20, 1895, she requests this one thing: that if the Holy Congregation declares the marriage null, her honor and reputation, as well as the legitimate rights of her children, be considered, "provided that the decree contains absolutely nothing that could harm me or my children, either morally or materially." And indeed, the patron, in his petition for the unfortunate woman, and in defense of the innocent offspring, first and foremost upholds the disposition of canonical jurisprudence. For, if equity of the Church, diligently examined, consistently serves the innocent party and the legitimate rights of the children, when a marriage is dissolved in good faith, contracted with ignorance of the law or of

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the fact, so that the children may not suffer for the errors of their parents. Thus teaches Alexander III, in chapter "Qui filii sint legitimi" - there: "Why should the sentence of divorce be pronounced canonically, so that the children should not suffer therefrom, when their parents are known to have entered into marriage publicly and without contradiction before the Church? Therefore, we decree that the children whom they had before the divorce, and who were conceived before the sentence was pronounced, should be considered no less legitimate, and that they should succeed to the paternal inheritance, and be maintained from the parents' resources." Good faith is required only of one of the spouses, notes the Advocate, even if the other has acted in bad faith. Thus, Schmalzgrueber, part 4, title 17 - there: "It may be doubted whether the good faith of both spouses is required, or whether that of one alone suffices. I answer that the good faith of one suffices, as is clearly stated in chapter, etc., for it would be like a monstrosity if someone were partly legitimate and partly illegitimate; since one or the other must be the case, it is fitting that the rights be granted as for an innocent offspring."

[*Latin ed. p. 534*]

534. VARSOVIAN. OR PARISIAN. spouses, who, unaware of the impediment to a valid marriage, acted in good faith, are subject to the following considerations. Although the Advocate concedes that the man may have been unaware of the impediment, the Advocate argues that, for the sake of legitimacy, the law, which is never averse to upholding rights, first presumes good faith, until the contrary is proven, as Schmalzgrueber states, in the cited passage: "For the same reason, in cases of doubt, ignorance is presumed rather than knowledge of the impediment." Secondly, even ignorance of the law itself may be considered as evidence of good faith, and therefore sufficient for the legitimacy of the children, as testified by ReifFenstuel, in the cited passage: "However, children born of an invalid marriage are considered legitimate in the eyes of the Church, and in good faith, on the part of at least one of the contracting parties, not only if the marriage took place through ignorance of the impediment, but also through ignorance of the law." With these points established, the Advocate inquires what the Church believes, and also what is the state of civil law, whether among the French or the Poles. Therefore, if the laws of the place where the marriage was celebrated are examined, the French law states: "A marriage that has been declared null produces civil effects, both with respect to the spouses and with respect to the children, when it has been contracted in good faith. If good faith exists only on the part of one of the two spouses, the marriage produces civil effects only in favor of that spouse, and of the children born of the marriage" [French Civil Code, articles 201, 202]. This law (which is otherwise quite clear) has been elucidated by the learned Toullier, in his work: *Il diritto civile francese*, book 1, title 5, number 666, where he states: "As for the children born of such putative marriages, they

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are legitimate in all respects: they enjoy the same rights as if they had been born of a marriage to whose legitimacy no obstacle existed. Therefore, they inherit not only from their parents, including the parent who acted in bad faith, but also collateral inheritances received through that parent; they bear the same surname and coat of arms as their father, and succeed to the endowments established in favor of..."

[*Latin ed. p. 535*]

WARSAW. OR PARIS. 535 from the firstborn among the males." Furthermore, the Code, among the Poles, where marriages are celebrated, confirms this, especially Article 263: "If both spouses have acted in good faith, the declaration of nullity of the marriage does not prejudice the rights and benefits derived for each of the spouses." On the other hand, the husband's advocate fears that another doubt, specifically intended, was raised in order to prejudice the question of the paternity of a certain son, born by the aforementioned woman, at a suspected time of conception. Indeed, according to the advocate, there are not lacking judgments in the records of the process concerning this matter. Certainly, the advocate swore an oath that the conjugal life in this case ceased from the year 1879; and the woman did not dare to deny this. The son, concerning whose legitimacy the matter is raised, was born on September 29th, in the year 1883, as is evident from the duly executed document inserted. Furthermore, the legal separation was decreed in May of the same year, 1883, at the request of the woman, who, however, as she herself admits, – as motives – did not allege those things of which she now accuses the husband, but – in fact, – those things for which the husband was indeed angered when he learned of her surprising pregnancy. However, according to the advocate, since no formal inquiry has preceded this matter, which otherwise does not exceed the competence of even secular tribunals, a judgment cannot, at present, be rendered in any way. Having considered these matters on both questions, the following doubts were raised: I. Whether the nullity of the marriage in this case is established; And, if affirmative: II. How provision should be made for the children, and for their mother in this case. To these doubts, the Sacred Congregation responded on January 25th, 1896. Deferred.

[*Latin ed. p. 536*]

536 WARSAW. OR PARIS. Hence, the Defender of the Marriage inquired from the Ordinary of Warsaw regarding the granting of jurisdiction made by the Ordinary of Paris to the Parish Priest of the Church of the Transfiguration of the Lord, concerning the power to unite in marriage and to bless the spouses, about whom we are speaking. Having considered these matters, the question was again postponed on August 22, 1896. And it was again presented on December 12, 1896, with the aforementioned doubts, after other declarations were requested from the Ordinary of Paris, the

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Sacred Congregation responded: To I. Affirmative. To II. Nothing is to be said. THEREFORE, IT IS UNDERSTOOD: That marriage is not valid in this case due to the absence of clandestine circumstances, or the absence of the proper parish priest. LEOPOLDEN, OR THE DISPENSATION. On July 1, 1896. Session 24, chapter 5, Concerning the Validity of Marriage. This cause, in which it is inquired whether the marriage has been consummated between the Count Michael and the Countess Henrietta, was presented to the Sacred Congregation for the fourth time: for it had been asked on May 21, 1892, "Whether it is necessary to consult with the Holy See regarding a dispensation from a marriage that is valid but not consummated in this case," and the response was dismissed; "From what has been presented, it does not appear that there is a lack of consummation." It was again presented on April 29, 1993, with the doubt "Whether it is necessary to depart from the previous decisions, so that the Holy See should be consulted regarding a dispensation from a marriage that is valid but not consummated in this case," and the Eminents and Prelates decided to respond "In the previous decisions." It was returned under the same formula of doubt on May 12, 1894, and a new response was issued: "In the previous decisions." On this occasion as well, the patrons of Count Michael obtained a new hearing, and, having obtained it, they strongly requested that the Sacred Congregation order new clarifications to be sought from the Curias of Vienna and Premislia. And this petition was transmitted to the Defender of the Bond ex officio, who approved of the matter. SUMMARY OF THE FACTS.

[*Latin ed. p. 537*]

LEOPOLIEN. OR PREMISLIEN. 537 Then, on September 22, 1894, the Sacred Congregation responded, stating: "Let the witnesses be examined according to the requests made both by the Defender of the Bond and by the plaintiff, Count Plater." The Synoptical Argument: The advocates who are striving with all their might against the consummation [of the marriage], primarily note, according to the prescription of the Sacred Congregation, that the Courts of Premislien, Vienna, and Leopolien have employed the utmost diligence in the examination of the witnesses, and have declared Veronica, the mother, and Stephanie, the sister of Countess Henrietta Plater, to be contumacious. Afterwards, having recounted the entire history of the unhappy marriage, they proceed to argue against the consummation of the marriage, asserting that, according to the law of the Decretals, two things are sufficient to prove the lack of consummation, namely, the oath of the spouses and witnesses who testify concerning the religion of those who swear the oath. These two things, however, are most clearly verified in this case. Indeed, the Count, when questioned, affirmed that the marriage had never been consummated. Nor does the Countess speak differently, who, while she recounted other circumstances, even to her own detriment, ingenuously, when questioned, confirmed that she had never

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consummated the marriage with her husband; and that this was according to her conscience. All of this was firmly confirmed by Henrietta in the formula of her oath. Furthermore, that the oath of the respectable spouses undoubtedly demonstrates their good faith, is also evident from the fact that four Episcopal Courts are concerned with the religion of the Count. For the Bishop of Premislien, in his report, noted: "Count Plater obtained the dissolution of his marriage, according to § 38 of the Civil Code, because he had contracted marriage with a woman who was already pregnant; but he, being convinced that marriage is a sacrament, and as such is subject only to the keys of the Church, submitted his case only to the judgment and benevolence of the Holy Apostolic See." And Count Michaelis...

[*Latin ed. p. 538*]

538 LEOPOLIEN. OR PREMISLIEN. "I dare to commend this man's piety." Similarly, the Archbishop of Selim, the General Vicar, and the Eminence, the Archbishop of Vindobona: "With a clear conscience, I can affirm that Lord Michael Count Plater-Syberg is a conscientious man, so that full trust can be placed in him based on what he has shown." And the Eminence Cardinal Lawrence Schlauch commends Count Plater in this way: "He is under his jurisdiction, being a man worthy of faith and truth in his oath concerning the lack of consummation, both as affirmed by the parish priest himself, and also from our own personal knowledge, he is a man in all respects irreproachable, honest, and entirely worthy of faith, and we are further convinced that the praised Lord Count, in the matrimonial process concerning his wife, Countess Laczynska, who was legally examined regarding the lack of consummation of their marriage, spoke only the truth." The sworn testimonies of the spouses are fully supported by the lawyers, as is clearly evident from the other propositions in the case, and this is further confirmed by the most recent supplementary investigation. In this investigation, they state that the father of Henry, under oath, confirms the declaration already made, namely that there has never been a carnal union. And the witnesses, John Machiewicz, the wife of the domestic Ciszynski, John Ciszynski, another domestic, and Veronica Damzynska, without ambiguity, assert that Countess Henry maintained dishonorable relations with Count Potocki and conceived a child from him. Regarding the matter of the lack of consummation and the truthfulness of the spouses, the following is stated by the patrons, based on the most recent witnesses examined: Veronica says: "They lived in the same house, but in separate rooms, and I do not know if they slept together. I know that they did not sleep together on trips and in Vindobona." And when questioned officially: "What does the witness think about the truthfulness of Count and Countess Plater?" she replied: "I believe that they are telling the truth in this serious matter, especially since they are obligated to swear to tell the truth." Count Komorowski, when asked: "Does he believe that

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they are worthy of belief in their testimony?" replied: "I believe so, even more so if they have justified themselves under oath." The father of Henry confirms what others have said.

[*Latin ed. p. 539*]

LEOPOLIEN. OR PREMSLIEN. In the year 539, [he] deposed [her], and confessed: "It has been made clear to me that the marriage was never consummated." And Anne Kutschera, a servant of the Laczynska family, stated: "I never saw the spouses in the same bed. Throughout the entire time that I was with them, it seemed to me that the marriage was not consummated. The Count is entirely worthy of belief."

Later, the advocates appeal to special circumstances or aids, which appear to them to outweigh the validity of the oath. First, careful attention must be paid to the woman's pregnancy and the mother's concern, as in the case of Henrietta, who, while intoxicated at night, entered into intercourse with the Count Plater in order to conceal a sin. This subterfuge would have been unnecessary if Henrietta had not detested the marital life. Furthermore, the concealment of the birth must be considered: "by giving the true reason for the intention, the woman pretended to have a leg injury," as the obstetricians state. Indeed, if even a single contact had occurred with her husband, Henrietta would certainly have revealed the subsequent pregnancy, in order to protect her honor and the legitimacy of her child. Finally, one must consider the ingenuous confession of the fault committed by Henrietta, which was made to her own detriment, and her immense love for the young man Potoeki, from which a natural aversion arose towards her husband.

The advocates conclude by citing several examples from the Sacred Congregation of the Council, in which it is clear that, in far more serious cases, a dispensation has been granted solely on the basis of moral certainty; and finally, in order to further substantiate their many reasons, they present to the Most Reverend Fathers a canonico-theological consultation that entirely favors the assertion that the marriage was not consummated.

OBSERVATIONS OF THE DEFENDER OF THE SACRED BONDS. The tutor of the marriage recalls, first of all, how he deemed the supplementary investigation requested by the adversaries to be most opportune; for it concerns spouses who have lived together for two months or more, and for the most part, alone with each other, both of whom are considered by confessors to be fit for marriage. It is also established that all the witnesses, to whom the action against [them] was directed, were not suspicious of the conduct of the spouses throughout that entire period.

[*Latin ed. p. 540*]

540 LEOPOLIEN. OR PREMISLIEN. were entirely absent; but during the marriage, they were family members to the spouses, namely Veron-

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ica, the mother, and Stephania, the sister of Henrica Laczynska, as also frequently appears in the investigation, the mention of the servants Anna, Maria, and Victoria. However, the desired clarity did not emerge, since the Countess Veronica and Stephania stubbornly refused to appear for the judicial examination. Furthermore, the defender of the marriage asserted that Count Michael claimed that Veronica and Stephania refused to undergo the examination because they were too averse to testifying against the marriage, since it would be most advantageous for them for the marriage to continue, and for this very purpose they had come to Rome. Indeed, on October 6, 1888, Count Michael bound himself before a public notary to pay to Countess Henrica "the sum of one hundred and twenty-five thousand florins in Austrian currency after the dissolution of the marriage." It is clear that this sum does not greatly differ from half of all the Count's assets. Therefore, if Henrica's mother and sister are to receive any temporal goods, they can expect nothing more, especially since the priest Paulus Szyryn testifies: "According to Russian law, the Countess is entitled to one-seventh of the estate." It is true, he says, that Veronica and Stephania were in Rome, but in no way is it proven that they advocated for the validity of the marriage in Rome, but rather the opposite seems more likely, since it is well known that the Countess's household was not overflowing with riches. Therefore, Veronica and Stephania would not have come to Rome on their own expenses, nor would they have stayed in the city for several months, nor would they have visited Naples, as Priest Paulus Szyryn believes. The Count fears Veronica's influence on Henrica, says the orator, because he is not content that Henrica should acquiesce to the action against the marriage, but he demands a completed conspiracy. Indeed, Count Michael underwent a judicial examination on February 4, 1889, and on the same day he met with the Countess and instructed her on what she should answer in her examination. Knowing all of this, the defender wonders how Pre-

[*Latin ed. p. 541*]

IN LEOPOLIENSI. AUT PREMISLIENSI. The Bishop, in his most recent communication to the Sacred Congregation of the Council, dared to speak at length in favor of the reputation and piety of Count Plater. Furthermore, the same Bishop had previously written to the Sacred Congregation about the same matter: "The process was initiated by Count Plater in order to preserve his honor and that of his family before the public, spurred on by others, believing that this cause, namely the alleged infidelity of his wife, would be sufficient grounds for dissolving the marriage." And on the 12th of September, 1889, he warned: "I observe that the plaintiff in this kind of false cause is mistaken in his belief that he will easily obtain a dissolution of the marriage, provided that the wife (Henrica) consents." Regarding the examination of new witnesses, the prosecutor observes that a certain Manetta was once listed among the household staff of the couple, but it is

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now established that she was not, in fact, a servant of the couple. Therefore, the servants Victoria Dauxynscha and Anna Kutschera remain. Victoria, when asked the question, "Do you believe that the spouses had carnal relations with each other, or not, and how do you know this?" answered, after being sworn: "I cannot affirm nor deny." Anna, on the other hand, testifies that she stayed with the couple for barely half a month. The other new witnesses, namely Iosepha Cisxyncho, Ioannes Cisxynhi, Count Carolus Komorowski, and Count Henricus Laczynski, the father of Henrica, did not hear or see anything suspicious about the couple during the time they were present, except for Henrica's father, who states: "I saw them (the spouses) for the first time in Vindobonae upon their return from a journey. I did not observe any extraordinary signs, although they were speaking amicably with each other. They did not tell me anything about the consummation of their marriage." This one fact, from the new supplementary investigation, sheds some light, namely, the affection of Henrica for Count Potoeki, which is of little relevance to the present controversy; whereas, on the contrary, many facts have emerged that suggest the consummation of the marriage. Indeed, the servant Victoria Dauxynscha testifies that Count Michaelem showed Henrica special signs of affection during the wedding journey, that is, he gave his wife some perfumes and a bouquet of flowers in Vindobonae, and upon the completion of the journey, he gave a gift to the Countess and her sister.

[*Latin ed. p. 542*]

542 LEOPOLIEN. OR PREMISLIEN. Certain books. Furthermore, after three months had elapsed since the marriage, the spouses gave gifts to the parish priest, Szarlinshi, who had played a significant role in the marriage, as a token of their gratitude. Neither does the advocate for the validity of the marriage present any canonical-theological consultation to supplement the lack of evidence, which, besides lacking any authority, dares to assert, among other things contrary to evident truth, that: "1. I do not know, Most Reverend Fathers, whether the testimony of the seventh witness has ever been so complete as we see it in the present case; 2. Indeed, all the witnesses, with one voice, declare both the lack of consummation of the marriage and the full validity of the parties." However, the defender denies this by calling into question the testimony of any witness. It is also false, the advocate maintains, that all the witnesses affirm with one voice the lack of consummation of the marriage and the full validity of the parties. What credence should be given to the testimonies of the spouses is determined, according to the advocate for the validity of the marriage, by examining their statements. Indeed, in the judicial questioning that the spouses underwent in 1889, both stated that they had desired the consummation of the marriage. However, despite this, the defender, in a lengthy letter dated September 18, 1890, denies having attempted to consummate the marriage three times,

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and much less that he had so desired its consummation, claiming that he was ill from the pain, but rather, he argues, that he had stubbornly opposed its consummation. With these things in mind, the purpose is to consider whether it is permissible to depart from previous rulings, so that a consultation may be sought from the Most Holy Congregation regarding a dispensation from a valid but unconsummated marriage in this case. RESOLUTION. After being discussed again by the Sacred Congregation on June 13, 1896, it was decided to respond: "Considering the newly presented information, sa-

[*Latin ed. p. 543*]

LEOPOLIEN. OR PREMISLIEN. 543. It is held that non-consummation of marriage does not constitute a valid marriage, and that recourse should be had to the Most Holy [See] for a dispensation from a marriage that has been consummated.

COLLECTIONS.

I. It suffices for establishing non-consummation of marriage, the oath of the spouses, and the testimonies of witnesses who testify regarding the religious state of the spouses.

II. In this matter, because the integrity of the woman was lacking, non-consummation was declared by the sworn testimony of the spouse, and by witnesses who testified to the religious state of the spouses.

CASTRIMARIS EXECUTION.

On December 12, 1896, and January 23, 1897. Through summary petitions.

This Holy Congregation, on February 29, 1896, again affirmed its judgment, in which, on May 25, 1895, it had overturned the judgment of the Metropolitan Curia of Sorrento, issued on November 20, 1893 (1).

The consequence of the decree of the Holy Congregation was that the priest of Naples, whom the assembly of simple priests had refused to admit into their college, acquired the right of admission.

This right of admission was denied to the aforementioned priest by the aforementioned clergy, who asserted that he did not possess the citizenship of Castrimaris, as was inquired in the records.

The Diocesan Curia, having knowledge of the matter judicially, recognized this right in the priest of Naples; but the Metropolitan Tribunal rendered a contrary judgment.

The Holy Congregation, by a double decree, judged that it was necessary to depart from the judgment of the Metropolitan Curia.

Therefore, the matter concerned the execution of a settled judgment.

However, the execution, up to this point, has been hindered by a certain

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question.

COMPENDIUM OF THE FACTS.

(1) Recole XXVIII, 224, in which the question is related, from which arises the present question.

[*Latin ed. p. 544*]

544 CASTELMARIS. In truth, on March 28th, the procurator of the Priest of Naples petitioned the Diocesan Curia for the execution of the judgment, whereby four points were requested: 1° That the Priest be inscribed in the register of the assembly of simple Priests from the date of the request until the assumption of the incompatible office of hebdomadarius, namely from June 13, 1892, to March 17, 1894. — 2° That he be admitted to the aforementioned Albarano sodality, to which he had been assigned, unless the Priests had rejected the Priest from their midst. — 3° That he be compensated for the emoluments which he had not received, and which he would have received during the time in which he had the right to participate in the assembly of simple Priests. — 4° Finally, that he be reimbursed for the expenses of the lawsuit in which the first judgment of the Diocesan Curia condemned the clergy. The clergy, responding to these requests on May 29, 1896, refused the first three points; regarding the fourth, they requested that a statement of expenses be presented to them. From the statement, the total expenses amounted to 2575 lire, which, however, the Curia, having accepted the mission from the Sacred Congregation of the Council to reconcile the parties, reduced to 1180 lire, with the consent of the Priest of Naples. Indeed, since the clergy refused to accept the Priest's requests, and the Curia, having considered the matter, confirmed its judgment; and furthermore, in order to avoid scandal, the Curia refrained from urging the forced execution; the matter was brought before the Sacred Congregation of the Council, and therefore, on August 8, 1896, a decree was issued to the Bishop to reconcile the matter, and, if he could not achieve this, to advise the parties to resolve the dispute in the general assemblies of the Sacred Congregation of the Council. Truly, since reconciliation could not be achieved, on September 18, 1896, "through a series of prayers," the matter was concluded. The Synopsis of the Diocesan Curia's decree, issued in execution of the judgment of the Sacred Congregation of the Council and in accordance with the request of the victorious party, is as follows:

[*Latin ed. p. 545*]

CASTELMARRE 545. "We, Alphonsus Maria Ruggiero, Archdeacon of this Cathedral Church of Castelmarre, Stabiae, and General Vicar of the same Diocese of Castelmarre, Stabiae. – Having examined the petition of the Reverend Father Antonino Di Napoli, in which he requests the execution of the Sentence of the Sacred Congregation of the Council in the case

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which he had with the Community of Clergy of the Church of Jesus and Mary of this city, concerning the safeguarding of the right of inscription in the Register of said Clergy, as evidenced by the documents existing in the Curia; and also concerning the reimbursement of expenses incurred for the honorable compensation of the advocate in the case, and for the compensation of the damages inflicted upon the aforementioned Reverend Di Napoli, duly notified to the aforementioned Clergy. – A response was made by the aforementioned Prefect of the Clergy on May 27th of the current year, 1896, with a reiteration of the petition of the Reverend Father Di Napoli, along with a note of all expenses, etc., and of the damages inflicted. – Another response from the aforementioned Prefect of the Clergy was given on June 5th of the current month. – Having considered that, although in the Sentence of the Sacred Congregation of the Council of May 25th, 1895, in conformity with other decisions and further of February 29th, 1896, no mention is made of the obligation of the Clergy to pay for expenses, etc.: nevertheless, rejecting the appeal in the Metropolitan Curia of Sorrento, the Sacred Congregation confirms the sentence of the Curia of Castelmarre, Stabiae, in the first instance, upholding the right of the Reverend Father Di Napoli against the unjust rejection of his petition for inscription, according to the Statutes of the Clergy, in the aforementioned Register, and therefore imposing upon the Clergy the obligation to reimburse all expenses and to repair the damage inflicted. – Let no one be prejudiced by hatred against another, Reg. XXII in VI, and – The Clergy are responsible for the damage which they suffer through their own fault, Reg. XXXVI in VI. – Having considered that, although the Reverend Father Di Napoli may have been removed from said Register, as the aforementioned Clergy asserts, due to his promotion to the Hebdomadariate; nevertheless, it must be maintained that he had been inscribed. For the Sentence protects the right of the Reverend Father Di Napoli from the day of his promotion to the Presbyterate; otherwise, his right would have been unjustly vindicated, and the sentence would have been in vain. Nor does it matter that he may never have been inscribed, Vol. XXIX, page CCCXLV, 35."

[*Latin ed. p. 546*]

546 CASTELMARIS is pious, and cannot be inscribed at this time: For it ought not to be imputed to him through whom it does not stand, if he does not perform that which was to be performed through him – Reg. XLI in VI. I note that the Reverend of Naples, on the thirteenth day of June, 1892, having requested, according to the Statutes of the Clergy, to be inscribed in the Register, three days after his promotion to the Priesthood, the request was rejected by the Secretary, the Reverend Vincent Criscuoli, on the seventeenth of the same month, because the petitioner lacked the necessary documents, and especially the birth certificate. However, since the decision of the Sacred Congregation, as well as the decision of Your

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Court, recognizes this right, the inscription must be maintained, as if it had been completed. For if it does not stand through him to whom it pertains, so that the condition is not fulfilled, it must be considered as if it had been fulfilled – Reg. LXVI in VI. Therefore, the decisions rectified the acceptance of the petition of the simple Priest, Antoninus Di Napoli; and consequently, the register with the name of the aforementioned Di Napoli must be retained in the Register, and afterwards removed due to his promotion to the Hebdomadariate, to be kept by the Clergy with the other registers, which are kept. I note that the Statutes of the Alban Register are distinct from the Statutes of the Clergy, yet the Clergy were promoted according to the same year, 1801, and these Statutes pertain to the Clergy; nevertheless, once inscribed in the Register, the inscription immediately and legally becomes an inscription in the Alban Register, within eight days of the Priesthood, according to the Statutes of the aforementioned Alban Register, which, as stated above, was the case with Di Napoli. If other Priests, outside the Clergy, are also admitted to the Alban Register, then the right of those who are part of the Clergy is all the more confirmed, so that the Priest Di Napoli must be retained. Furthermore, there is a custom that has always been observed, of inscribing Priests in the Alban Register, after they have been inscribed in the Register of the Clergy. "Indeed, the Priest Di Napoli did not fail, after being provided for the Hebdomadariate, to present to the current Prefect a petition in which he requested his inscription in the Alban Register, but that Prefect rejected it and postponed it. This petition lacks documents; nevertheless, by the aforementioned Prefect..."

[*Latin ed. p. 547*]

It cannot be denied, and therefore (according to the aforementioned rules), the Diocese of Naples has done all that it could regarding the inscription in Albarano, and legally, it must be considered as if he had been inscribed. – Furthermore, Pope Pius V, in the aforementioned decree, states that, during a legal dispute, fruits, revenues, and all other benefits which, by virtue of constitutions, customs, and statutes, etc., are to be deposited, must be returned to the one to whom they are legally due. – Thus, the priest of Naples has the right to demand the restitution of said fruits, etc., at least for the duration of the legal dispute. Nor does it impede that certain matters may require his personal presence, because, according to the aforementioned rules of law, he is not considered to have been absent, and therefore he must be considered present, at least until the time of his promotion to the Hebdomadariate. – Furthermore, the clergy themselves, in the response given on the 27th of the month of May, requested a note of expenses, with the clause "if and to the extent that," and therefore they cannot contradict themselves by denying any payment whatsoever. – Once something has been decided, it cannot be subsequently overturned. – Rule XXI, section VI. – Since the aforementioned note results

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from the acts of the process, and the requested restitution is the minimum among compensations of this kind, it must be legally retained. – After carefully considering the matters of law to be considered, and having considered both the legal and factual aspects, with God and his justice before our eyes, and sitting as a tribunal, humbly invoking the name of Christ, we decree, we establish, and we definitively pronounce judgment that the Community of Simple Priests of the Church of Jesus and Mary of this City, after a canonical convocation of the priests of the same, for the recognition of the right claimed by the Reverend Antonino Di Napoli, 1. shall inscribe the name of the aforementioned simple priest in the aforementioned register, dated June 13, 1892, which register must be kept, as must be kept all other registers removed for the same reason; 2. shall inscribe, or cause to be inscribed, the aforementioned Priest Di Napoli in Albarano, making all his rights known to him.

[*Latin ed. p. 548*]

548. The expenses and obligations incurred by [the individual] from the time of his ordination to the priesthood. 3. He shall pay to [the recipient] the distributions, emoluments, etc., that would have been paid to him, had he been registered in the [relevant register] until his promotion to the office of hebdomadarius. 4. Furthermore, he shall pay to the same priest of Naples all expenses and the fee to the lawyer, according to the attached document. - We further decree and establish a term of ten days from the day following the notification of this definitive sentence for the fulfillment of all that has been established and determined, notwithstanding any appeal, and with the express obligation of informing this Court of the said individual's fulfillment. If these ten days pass without fulfillment, we will transmit all documents to the Sacred Congregation of the Council; so that it may deign to dispose of the matter appropriately. And thus we declare, decree, and definitively sentence. - Given from the Episcopal Curia of Castrimaris, Stabiae, on the fifteenth day of June, 1896. DEFENSE OF THE CLERGY. On the contrary, the clergy of simple priests, individually, responding to the intention of the Orator, first of all points out that the matter concerns the inscription in the [relevant register], which is merely a question of a condition that is not possible to fulfill, since the clergy consists of simple priests; but the priest of Naples has already been honored with the office of hebdomadarius. The statute corresponds to the denomination of this clergy, since it expressly states: "Only simple priests of Castellamare are admitted to be part of the [relevant register]." Therefore, no injustice is caused by the sentence of the Sacred Congregation of the Council, which will immediately have its effect, if the Orator, having relinquished the office of hebdomadarius, becomes a simple priest and then requests to be enrolled in the clergy. However, the clergy opposes the inscription in the association called "Albarano," stating that the appropriate time, namely

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eight days from the beginning of the priesthood, has passed, during which the priest of Naples neither requested nor obtained such enrollment, as required by article 3 of the statutes of the association. Therefore, the clergy concludes that the priest of Naples should present another request to the Prefect of the association, about which the members, as is customary, will deliberate.

[*Latin ed. p. 549*]

CASTELMARIS 549. But a more serious question arises concerning the benefits which the Advocate claims for himself during the time when he should have been registered in the Album. – However, the simple priests reply that this right cannot be claimed today, because these benefits are, by their very nature, relative to certain duties, and are not received unless those duties are fulfilled. For the Church to which the simple priests belong is a parish church, the revenues of which are distributed among those present, namely, those who perform the sacred functions. Therefore, if the priest of Naples is to be compensated for benefits not received, not only should each sacred function be estimated and taxed at a certain sum of money, but this sum of benefits should be returned by each participant, in proportion. – Which would certainly be a more serious matter, because the priests would have enjoyed these revenues in good faith. Indeed, good faith benefits the possessor to the same extent as truth; insofar as the law is not an impediment; from R. I. ff. I, 136; or it causes the fruits received and consumed in good faith not to be subject to restitution; thus D'Annibale II, 239 sq., with commentary. But the priest of Naples, claiming these benefits, especially points out that he should not be held liable for any loss, nor blamed for not being registered in the Album, nor for not performing his duties; because, indeed, he was forcibly prevented from doing so by the insistence of the simple priests. However, this argument can be countered by the decision of the Sacred Congregation in one case from Imola, March 3, 1736, in which a cathedral canon was claiming distributions which he would have received during the entire time that, due to questions raised by the capitulars, he was prevented from taking possession of his benefice, as he most urgently asserted. – The Sacred Congregation responded: "The daily distributions are due only for the time during which the impediment occurred, and no more." Finally, the sentence of the diocesan court condemned the clergy to pay the expenses of the previous lawsuit, based on this simple argument; namely, that the Sacred Congregation had overturned the sentence of the metropolitan court, and therefore the diocesan tribunal.

[*Latin ed. p. 550*]

550 The Sacred Congregation [of the Holy Office] considered its judgment to be valid and firm in every respect; and therefore, also with regard to the condemnation of the losing party to pay the costs of the litigation.

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The Sacred Congregation made no exception. On the contrary, the clergy maintained that it is the custom of the Sacred Congregation not to condemn the losing party to pay the costs of the litigation. Indeed, in the Regulations established for cases to be judicially processed before the Sacred Congregation, in article 25, it is stipulated that the costs between the parties should always be considered compensated, except in certain cases expressly specified, namely, cases of marriage, alimony, spoliation, offenses, and contumacy, and cases of a new hearing granted, notwithstanding the clause and further, when there is no departure from the decisions. This practice of the Sacred Congregation was firmly confirmed in Terracina, "per summaria precum" on July 27, 1830. Furthermore, fundamental principles of Canon Law must be invoked in this matter. Indeed, the temerarious litigant is to be condemned to pay the costs, namely, he who, rather than relying on a good right, even if doubtful, descends into the arena of judgment based on deceit and fraud. For in the text of the law – *Eum quem temere* [De lud.] – it is decreed: "He who is found to have temerariously summoned his adversary to judgment must pay his expenses to his adversary." And in the Institutes of Justinian, title *De poenis temere litigant* – it is said: "The unconscionable litigant must be compelled to compensate his adversary for the damage and the expenses of the litigation." These principles were adopted into Canon Law, as stated in *arg. cap. Cum dilecti, De dolo et contumacia*, as interpreted by the Glossa in that chapter, and by the Abbot there, number 17. Reiffenstuel (Canon Law, title *De sent. et re iud.*, n. 178) points out that there is no condemnation to pay the costs when the losing party had a just cause for litigating; and he gives the reason: "because... the reimbursement of expenses is like a species of penalty imposed by law on those who litigate temerariously; but a probable cause for litigating excuses the litigant from temerity; therefore, it should also excuse him from the penalty of reimbursing the expenses." However, the group of simple priests insists that this litigation should be considered more temerarious, after the Curia of Sorrento, with reasons that are not to be scorned, in its previous ruling.

[*Latin ed. p. 551*]

CASTRIMARIS 551 corrected the judgment; and he considered the same question worthy of examination by the Sacred Congregation, which is repeatedly brought up for review. The aforementioned clergy, therefore, believe that they are purifying themselves from the mark of rashness, because here it is a matter of the fundamental law of the sodality, and if abuses pervert or distort it, then its moral existence is already compromised. And, as the clergy testify, they have acted to eliminate every flaw of abuse. Therefore, the question before the Eminent and Reverend Fathers concerns whether the judgment of the Curia should be confirmed or rejected.

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But, having now turned to my duty, I note that in the aforementioned judgment, a passage is cited from the Seventh Book of Decretals, the Constitution "Corde Nobis" of Divine Pius V: and this Constitution is found in chapter 2, heading II, concerning sequestrations.

Indeed, the Seventh Book of Decretals does not have external authority, as the canonists say, since this collection of Decretals has never been approved by the Supreme Pontiffs; but nevertheless, the cited constitution does not lack intrinsic authority, since it genuinely emanates from the Pope.

This law commands that, during a legal dispute, the fruits and distributions of ecclesiastical benefices must be submitted to a sequestrator for their safe preservation, and subsequently returned to the victor.

Therefore, the intention of the Pope seems to support the priest of Naples, who, although he does not currently receive distributions deposited with the sequestrator, nevertheless has a right to receive certain revenues from the common fund for his compensation, without any deduction from the revenues he has received.

Moreover, the resolution of the Sacred Congregation in the aforementioned Imola case concerns truly beneficial revenues; whereas here, we are dealing with emoluments more directly related to the right and honor of being enrolled in the clergy, than to the honor of the sacred functions.

Having considered these matters, it was determined that a response should be given.

RESOLUTION. The Sacred Congregation, having re-examined the matter on January 23, 1897, decided to respond: The judgment of the Curia of Castrimaris of June 15, 1896, is to be confirmed, deducting the expenses incurred in the legal proceedings before the Sacred Congregation.

[*Latin ed. p. 552*]

552 MILAN. NULLITY OF MARRIAGE. December 12, 1896. Session 24, chapter 5. Concerning the annulment of marriage. SUMMARY OF FACTS. The marriage, which Aloysius and Ernesta lawfully contracted before the parish priest of Gronozzo, in the Diocese of Novara, on April 23, 1873, is now impugned by mutual consent, because the bride has always been unfit for performing the duties of marriage due to a defective female constitution. The husband states that he has fruitlessly attempted to consummate the marriage from the very first days of their union; therefore, the wife consulted several experts in the medical arts, who, after a careful examination, declared that she was absolutely incapable of consummating the marriage due to an organic and incurable defect. With this judgment of the doctors in mind, Aloysius considered seeking the dissolution of the marriage, both before the Church and with regard to the civil bond. Therefore, on November 8, 1885, while residing in Milan, he presented a petition to the Archbishop, requesting a declaration of the nullity of his marriage based on the grounds

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of absolute and perpetual impotence, on the part of the woman, prior to the marriage. The Archbishop, having received the petition, established a Tribunal and, through a delegated judge, initiated the process, simultaneously requesting a dispensation from the Sacred Congregation of the Holy Office regarding certain judicial forms. To which the Sacred Congregation replied: "Let the Archbishop ensure that the witnesses are examined with the utmost care, at least with a greater number than is possible; and, omitting the presence of the Judge, the Defender of the Faith, and the Notary during the examination, let him ensure that all other procedures are followed which should precede, accompany, or follow the examination itself, using the precautions and means that experience and prudence suggest; and finally, let him dispense with the bath, in order to avoid difficulties arising from the part of the doctors, who, nevertheless, must provide their expertise in the matter at hand and be superior to any objection."

[*Latin ed. p. 553*]

MILAN. 553. While the proceedings were underway, and in the month of June 1886, the spouses informed the Milanese Curia that they wished to withdraw from the action for the nullity of the marriage, and that they were prepared to live as brother and sister. However, with the passage of time, this manner of life became intolerable for Aloysius and his bride; and therefore, in the month of June 1895, they presented a new petition to the Milanese Curia, earnestly requesting the continuation of the cause and the declaration of the nullity of the marriage, for the same reasons. With a newly constituted Tribunal, the proceedings were resumed, but those acts which had already been performed were not renewed; only one expert, the most celebrated of all, was heard, and in January of the following year, the delegated judge pronounced that there was no marriage, due to the woman's impotence, which was prior and perpetual. It was noted, as a matter of record, that in the proceedings, certain things had been omitted from which the Sacred Congregation could not grant dispensation. Specifically, the woman's examination and her witnesses were lacking, and only one witness was examined on the part of the man. A Synopsis of the Discussion. In presenting our opinion, we propose the following question for our consideration: Whether the nullity of this marriage can be established on the grounds of impotence. However, before we present the principles of law upon which our resolution is based, and before we offer certain objections for a fuller elucidation of the matter, we will first state the following. "If, upon examination of the bodies, certain signs of impotence are apparent (for example, if it appears that the man lacks both testicles, or has had his genitals removed, or if the woman is so constricted that she cannot have intercourse without risking her life), then the marriage must be annulled immediately, and no time will be granted for further investigation, nor is a

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sworn statement from a canonist required."

[*Latin ed. p. 554*]

554 MILAN. Those who are impotent, nor are married, because they have never carnal knowledge of each other. The Abbot in c. 6 of the Fraternity, On Chastity and Malefactions, no. 11; Sánchez, book 7, disputation 107, no. 7, and all agree with this. The reason is that when impotence is clearly established, it is also evident that the marriage is null, consequently, the supposed spouses must be separated from all carnal intercourse. Neither the oath of the spouses nor of relatives is required, since it is superfluous in a case in which the matter is manifest through sworn testimony of experts. However, they can live together as brother and sister, as stated in no. 62. — Reiffenstuel, book 4, title 15 On Chastity and Malefactions, no. 42. "The proof that is made through evident fact, or visual observation, is the best of all, and is stronger than other proofs in the world..." — Reiffenstuel, book 2, title 19 On Proofs, nos. 91 and 166. "The visual inspection must be made by experts in the art—who should also swear an oath...so that they may declare the truth, inclining neither to one party nor the other, but faithfully according to what they discover in their conscience." Reiffenstuel, book 2, title 19 On Proofs, no. 22. Although, in cases of doubt, one must rule in favor of the validity of the marriage, according to the rule derived from the text in chapter 47, in fine, On Witnesses, nevertheless, this applies to questions of nullity, which does not impede, nor can it impede, the end and effect of marriage, namely procreation, as happens when it is a question of proving or excluding degrees of consanguinity, etc. However, the matter is different in the question of nullity from the chapter on impotence, through which the marriage is itself null, and cannot achieve its end and effect; then, because it is a question of inferring prejudice and injury to the very Sacrament of marriage, the reasoning or rule proceeds directly in the opposite direction, namely, that in case of doubt, one must rule in favor of the exclusion of the marriage, as the Abbot, Felin, Hostiens, Monald, Sanch, and Rot clearly state. This is a living principle, because in the ecclesiastical forum...

[*Latin ed. p. 555*]

MILAN. 555. It is deemed more tolerable and honorable, according to the judgment of the Church, to dissolve a marriage through canonical proofs, and in accordance with Church discipline, than to provide, by name and by the law of marriage, an opportunity for incontinence, and to foster a continuous sin, as follows the Abbot, Baron, Perez, Hurtad, Sanch, and Gigas. – Cosci, *De Separatoribus Coniugum*, Book 3, Chapter 2, numbers 386-393. Maintaining other principles, the Consultor stated that it is certainly and evidently established that this marriage is null due to the woman's impotence. This is proven by the unanimous testimony of physicians, after

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an examination of the woman's body. There were six experts, as we have already said, who conducted this examination; three were from the ecclesiastical court of Milan, and the others were appointed by the civil court: who assert the woman's impediment to cohabitation.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. Aloysius and Ernesta, bound to each other by mutual love, entered into the marriage bond on April 2, 1883; then, on November 8, 1885, Aloysius declared the marriage invalid, due to the woman's defect, before the archiepiscopal court of Milan; but in June of 1886, he postponed the judgment and continued to live with Ernesta until June of 1895, when the spouses initiated a new legal action for the nullity of the marriage, based on the aforementioned grounds, by mutual consent. The Most Reverend ecclesiastical court of Milan summoned Aloysius and his father for a judicial examination, and ordered four men skilled in the healing arts to examine Ernesta's body; namely, Alexander Cuzzi, Hector Truzzi, Malachiae De Cristoforis, and Edward Porro. The first and last, namely Alexander Cuzzi and Edward Porro, examined Ernesta's body without the mandate of an ecclesiastical judge. Satisfied with this, the judge concluded the judicial investigation, did not interrogate Ernesta, nor did he summon any witnesses; but in January of the following year, he decreed: "The marriage is invalid due to the woman's prior and permanent impotence."

[*Latin ed. p. 556*]

556 MILAN. This sentence, issued without examination by a seventh witness and another unheard spouse, does not please, because, as Sánchez de Matrim. lib. 7, disput. 107, n. 1, points out, "The judge must always consider that he should demand more abundant and thorough proofs of impotence, and that he should employ every precaution that can be applied through all methods of proof. Because the question of the dissolution of marriage is a most serious matter, and one in which the greatest danger to the soul is involved, either in dissolving a valid marriage or in approving an invalid one." Then, the sentence, as stated above, does not please either spouse, nor does it satisfy the seventh witness of either spouse, except that it is not safe, because, as experience testifies, the eyes and hands of midwives are often deceived, and likewise the judgment of physicians is often deceptive, as Sánchez De Matrim. lib. 7, disput. 107, n. 7, manifestly states, and it suffers from the vice of nullity. Indeed, Honorius III, in the final chapter on frigidity and impotence, concludes: "When the spouses, with the seventh witness confirming their oath, declare that they have not been able to have carnal intercourse, let the sentence of divorce be pronounced between them." Concerning this matter, Sánchez [loc. cit. 7, disput. 108, n. 9] says: "The Pontiff, in prescribing the FORM for dissolving a marriage, by reason of impotence, sets as a prerequisite this oath. And if this oath is a form prescribed by law, its OMISSION RENDERS THE SENTENCE

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NULL." However, if you were to object to me, citing the Glossary, which in the chapter on Fraternities, under the word "matrons," on frigidity and impotence, teaches that the oath of the seventh witness is not necessary, when the signs clearly and necessarily conclude impotence, whether in a man or a woman, as Sánchez loc. cit. disput. 108, n. 3, states. No sane person can seriously affirm that the signs found in Ernest's body necessarily and evidently conclude impotence. And in truth, the learned physician Malachias de Cristoforis defines the defect found in Ernest's body as follows: "I found in the body of the woman that which makes her impotent for intercourse; for beyond the vaginal opening, there is a space of one and a half..."

[*Latin ed. p. 557*]

MILAN. The measurement is 557 centimeters, and there is a membrane present which obstructs the vaginal opening. However, the aforementioned defect does not necessarily or evidently lead to impotence. Hear Zaccaria, in the legal code, I. 9, title 3, question 5, number 4: (there) "The membrane may be thin or thick and fleshy, or it may be perforated or not, or it may be located either internally, towards the opening of the uterus, or in the middle of the cervix, or near the external os: for all these differences make a great difference in determining which obstruction is curable and which is incurable; also, which can be cured easily, which with difficulty, and which cannot be cured without some risk to life." The same Zaccaria continues (in the same place): "Therefore, the thicker this membrane is, the higher it is located, and the more closed and without any opening it is, the more incurable it is, indeed, in no way curable. The thinner it is, the lower it is located, and the more open it is, the more easily and with less risk it can be cured; but that which is in an intermediate state is subject to a moderate degree of both danger and difficulty of cure." Indeed, in the present case, the membrane is located "one and a half centimeters beyond the vaginal opening." Furthermore, as mentioned, the aforementioned defect does not necessarily or evidently lead to impotence, but moreover, several signs of puberty were observed in Ernesta. Indeed, the aforementioned judicial expert, Malachias de Cristoforis, when questioned by the judge, asked whether he had found any signs in the girl's transition to puberty by which it could be argued that she lacked the proper organs of her sex; he replied that the girl had reached puberty with all the characteristics with which puberty is usually endowed in others of regular constitution. These signs of puberty are accurately described by another judicial expert, the doctor Hector Truzzi. The two judicial experts, Eduardus Porro and Alexander Cuzzi, would not dare to disagree with these findings, although they are not considered immune from legal scrutiny, since, as we have mentioned above, they had already examined Ernesta's body without the mandate of

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an ecclesiastical judge.

[*Latin ed. p. 558*]

558 MILAN. Nor am I moved by Edward Porro, who states that this case is certainly one of impotence; for when Edward speaks in this manner, it is clear that he is amplifying, either through the rhetorical form in which he presents his judgment. Furthermore, if the present case of impotence is so certain and evident, I scarcely understand why the archpriest has not examined the body of Ernestae not once, but four or five times, as he himself confesses. For when the signs clearly and evidently indicate impotence, it is forbidden for a physician to repeat the examination, especially when the matter concerns a woman. From what has been discussed thus far, we descend from the pronouncement, like a slope, to the written question: "Whether the sentence of the archiepiscopal court of Milan is to be confirmed or rejected," and the answer is: "It is to be rejected." For the asserted impotence does not shine with the least evidence: but the oath of the seventh hand, together with the sworn confession of the spouses, which in this case, as has been demonstrated, must be added to the testimony of experts, are absent from the judicial records. And that is not all: the opinion of a theologian is also lacking. Nor can there be any place for the granting of a dispensation concerning the marriage, which is alleged to be unconsummated. Moreover, it is uncivil to resort to extraordinary measures when ordinary remedies are available, nor has a petition, in which a complete and accurate account of the entire matter is contained, been presented to the Most Holy Prince, nor do I see the Most Blessed Father having ordered a discussion of this matter. It is better to hear Pope Benedict XIV in the celebrated constitution "Dei miseratione" (§ 15) - there -: And since it often happens that prayers are presented to the Apostolic See for a dispensation concerning a valid but unconsummated marriage, which are most often, for the purpose of a consultative vote, referred to the Congregation of the Holy Roman Church of Cardinals Interpreters, or sometimes to a particular Congregation appointed by the Roman Pontiffs for the time being, so that such requests may proceed in order and properly, we wish and command that...

[*Latin ed. p. 559*]

MILAN. A humble petition, to be presented to Us or to the Roman Pontiff, should be exhibited at the appropriate time, containing a full and accurate account of the entire matter, and expressing all the reasons which the petitioner believes may contribute to obtaining the requested dispensation, so that the Roman Pontiff, having read and carefully considered it, may deliberate with himself whether to reject the petition, or to entrust its examination to one of the aforementioned Congregations. After considering these matters, along with the observations of the Canonist and the

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Defender of the Faith, the following question was to be clarified: "Whether the opinion of the archiepiscopal court of Milan should be confirmed or rejected in this case."

RESOLUTION. The Sacred Congregation, after discussing the matter on December 13, 1896, decided to respond: "With prior authorization of the authorities, the opinion should be confirmed, as stated."

FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS. Regarding the custom by which tertiary sisters, etc., visit their parents' home and remain there to care for them in cases of infirmity. August 26, 1896.

Most Eminent Fathers, the Bishop of Majorca, in Spain, reverently presents the following question to the Sacred Congregation of Bishops and Regular Canons: "Can the custom of visiting the home of parents or siblings be tolerated, which is practiced by Tertiary Sisters of simple vows, whose Constitutions have not yet been approved by the Apostolic See, in the case of serious infirmity of those individuals, in order that they may assist them, and remain there alone as long as the infirmity lasts?"

While I offer this response, I sincerely wish you prosperity.

Your obedient brother,

The Bishop of Majorca.

Palma, August 8, 1896.

[*Latin ed. p. 560*]

560 FROM THE SACRED CONGREGATION OF BISHOPS AND REGULARS. To the Most Illustrious and Reverend Lord, as a brother, concerning a doubt which Your Eminence presents to this Sacred Congregation of Bishops and Regulars: "Whether it can be tolerated, that the Sisters of the Third Order, who have taken simple vows without enclosure, whose Constitutions have not yet been approved by the Apostolic See, may visit their parents or brothers in the case of their grave infirmity, in order to assist them, and remain with them as long as the infirmity lasts." The same Sacred Congregation considered that the following should be answered: "Concerning an Institute of simple vows, diocesan and without enclosure, the custom of which is mentioned in the petition, depends on the prudent judgment of the Ordinary, with the necessary precautions observed." This was to be communicated to Your Eminence, to whom I wish all good things and happiness from the Lord. Rome, 26 August 1896. As a brother, I. CARD. VERGA, Prefect. A. TROMBETTA, Pro-Secretary. FROM THE SACRED CONGREGATION OF THE HOLY ROMAN CHURCH, THE INQUISITION. A DOUBT concerning the tradition of instruments and the imposition of hands at the time of Holy Orders. On December 2, 1890. The Reverend Father Bishop N. N. presented the following: N. N., a priest, doubts the validity of his Ordination for the following reasons: 1° The Bishop who

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ordained him, while handing over the chalice with the paten, the wine, and the bread to be consecrated, and reciting the Roman formula, perhaps did not touch the instruments himself, although he knelt before them, while the candidates touched them in some way, with a cleric supporting them. 2° N. N., after being ordained, after the first imposition of hands from the altar, as the other six to be ordained approached in pairs to receive the imposition of hands, withdrew, a distance of approximately three o...

[*Latin ed. p. 561*]

From the document of the Sacred Congregation for the Inquisition, number 561, it is stated that, there, kneeling and leaning on a bench, he received the imposition, perhaps separated from the other candidates who were closer to the altar, and he did not approach the altar when the Bishop and the priests performed the imposition on the right hand, which is essential to the Ordination. His Eminence is requested to write to me whether a priest thus ordained is obliged to receive the Ordination again under a condition, or whether it can be imposed upon him so that he may regain peace of conscience, both because the tradition of the instruments is not certainly essential to the Ordination, and because, while the Bishop and the priests held their hands extended during the second imposition, the one being ordained was morally united with them or with others, and physically present, in the very sanctuary, or in the Holy of Holies, although, as mentioned above, he was distant from the altar. After these doubts were carefully examined, in a general Congregation held on Thursday, December 4, 1896, the Most Eminent and Most Reverend Lords Cardinals Inquisitors General, after hearing the opinion of the Reverend Consultors, ordered that the following answer be given: To both questions: "Let it be so." On the following Saturday, December 6 of the same month, the Most Holy Lord Pope Leo XIII, by divine Providence, having graciously approved and confirmed the resolution of the Most Reverend Fathers during his customary audience with the Reverend Father Assessor. I. CAN. MANCINI, Notary of the Holy Roman and Universal Church. From this response, do not infer that, if the Bishop did not touch the instruments presented for the Ordination, the Ordination is not to be repeated. Indeed, in the case now under consideration, there is a negative doubt, or scruple, as it clearly appears from the words: "perhaps," "possibly"; hence, the Most Reverend Fathers answered: "Let it be so." However, whatever you may think about the theoretical question, which has been discussed by the authors, whether physical contact is required for the validity of the Sacrament, or whether moral contact is sufficient, or, on the part of the Bishop, (which seems to be implied by the pontifical words: "to deliver"), in practice, however, whenever physical contact is lacking on the part of the Bishop, the Sacred Congregation for the Inquisition usually orders that the Ordination be repeated under a condition, as the following shows. "On Thursday, August

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1, 1697. The Most Holy [Father], having heard the opinions of the Most Eminent [Fathers], approved the opinion of the Reverend Consultors in all respects. The opinion, of which we spoke above, is as follows: The Reverend Consultors were of the opinion that, in the case under consideration, it is safer to..." (The rest of the sentence is incomplete in the provided text).

[*Latin ed. p. 562*]

562 From the Holy Office, it is reiterated that the conferral of the Sacred Orders should be repeated, and therefore, it must be written to the Archbishop B. that those who were ordained to the Orders of Subdiaconate, Diaconate, and Presbyterate by Bishop A., without having received from him the matter of said Orders, should again be ordained to said Orders, under the same condition and individually, observing the form prescribed in the Roman Pontifical. Furthermore, this may be done outside of the usual times, and without observing the intervals on the three Sundays, or on days of precept, and even on the same day, as far as the care of souls is concerned, as urgent necessity may require, at the discretion of the ordaining prelate. To the aforementioned Archbishop, the faculty is granted to authorize those who reside outside of his and of Bishop A.'s dioceses, so that they may be again ordained, under the aforementioned condition, outside of the usual times, without observing the intervals, and in all other respects as above, by any Catholic bishop, having the grace and communion of the Holy Apostolic See. Furthermore, the aforementioned Most Eminent [Archbishop] is granted the faculty to confirm the conferral of benefices, even those of curators, which have been conferred upon those thus ordained, to remit the fruits received from the benefices, and to confirm all offices, even those regulated by rules, and to ratify all acts, and to absolve [them]. However, concerning those who were ordained before the year 1688, inclusive, and for whom Bishop A. believes that he himself provided the matter, and who themselves still doubt whether they received the matter from him, they are to make a declaration that those who doubt or expressly deny, without any other oath, will be admitted to a new ordination under the aforementioned condition, as above. If, however, those who were ordained from the year 1688 onwards, for whom it is presumed that the matter was not provided by the Bishop, all of them shall be again ordained, without distinction, under the aforementioned condition. Furthermore, if a Bishop, by imposing his hands, did not touch the head of the person being ordained bodily, the ordination must be repeated, secretly and at any time of the year, as is evident from the following response: "A certain Italian Bishop humbly reported to the Sacred Congregation of the Holy Office that, about four years ago, when he wished to confer the order of Deacon upon a certain excellent Subdeacon of his diocese, he indeed held his right hand over the head of the aforementioned, but did not, in fact, touch the head bodily. And since this minor defect was soon noticed by the

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aforementioned Bishop, and by other ecclesiastical men consulted by him, the same cleric was, not long afterwards, ordained to the priesthood..."

[*Latin ed. p. 563*]

FROM THE SACRED CONGREGATION FOR THE INQUISITION, 563 – He promotes the order, which he himself has commendably practiced in Clairac for three years. However, the recollection of that defect now causes great anxiety for the Bishop, and raises doubts about the validity of the aforementioned diaconal ordination. Therefore, the aforementioned Reverend Bishop reverently submits these two questions to Your Eminences: I. Whether, in order to remedy the aforementioned defect in the ordination, the entire ordination to the diaconate must be repeated in that priest, under a certain condition. And, if so: II. Whether this repetition of the ordination under a condition can be performed by any Catholic Bishop, secretly, at any time of the year, even in a private chapel, as was the response in a certain Rescript of the Sacred Congregation of the Holy Office on January 28, 1835, in order to remedy a certain defect in the imposition of hands, which had occurred in the ordination of a certain presbyter. The Sacred Congregation, after mature examination of the case, on the sixth day of the week, January 20, 1875, responded: To both, affirmatively, with the consent of the Most Holy [Pope]. – On the same day of the week, the Most Holy [Pope] confirmed the resolution of the Most Eminent Lords, and deigned to grant all the necessary and appropriate faculties.

QUESTIONS concerning the Baptism of the children of infidels. On July 18, 1892. On August 28, 1886, questions were submitted to the Sacred Congregation for the Propagation of the Faith by the Bishop of Kishnaghure, which, having been transmitted to the Holy Office on July 18, 1892, finally received a response approved by the Pontiff: I. Can the children of infidels be baptized, if they are in danger, but not in articulo mortis? II. Can they at least be baptized, when there is no hope of seeing them again? III. What, if one very prudently doubts that they will live, but will die before the age of discretion, due to the infirmity with which they are afflicted? IV. Can the children of infidels, who are in danger or in articulo mortis, be baptized, if there is doubt as to whether they have touched the [state of] grace?

[*Latin ed. p. 564*]

564 FROM THE SUPREME SACRED INQUISITION, concerning both discretion and the absence of an opportunity to instruct them in matters of faith? The response to I, II, and III is: Affirmative. To I V: Missionaries should strive to instruct them in the best way possible; otherwise, they should be baptized under condition. The Pauline privilege is granted to a woman converted to the Catholic Faith. On November 28, 1894. The Most Blessed Father, the Archbishop, Bishop of Seraievensis and Vhrbornensis, prostrated before Your Holiness, stated: Mary B., a certain

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woman who, two years ago, converted from the Mahometan religion, desires to enter into a new marriage with a Catholic man, having already left her former husband, Julius B., who is an unbeliever and unwilling to convert. Although this man affirms that he wishes to live with her without offending the Creator and to raise the children of both sexes in the Catholic religion, the woman, on the contrary, is convinced of his bad and deceitful intentions, arguing this both from certain letters from her own uncle, who urges her to return to the Mahometan faith, perhaps not without the consent of Julius himself, and from the fact that he has openly expressed a desire to mistreat her, and from the fact that Mahometans harbor the greatest hatred for women who have converted to the Christian Faith, and are therefore sometimes killed by their parents and relatives. Therefore, the Archbishop, the speaker, humbly requests that Your Holiness, by virtue of either the Pauline privilege or Your supreme authority, deign to dissolve the marriage bond between Mary and Julius B. as soon as possible. Thursday, November 28, 1894. In the general congregation of the Holy Roman and Universal Inquisition, after examining the aforementioned petition and considering all aspects, both of law and of fact, and after the vote of the Lord Consultors, the Most Eminent and Reverend Lords, Cardinals Inquisitors General in matters of Faith and morals, decreed: That a petition be made to the Most Holy [Father] for a dispensation from further inquiry, and that the woman may make use of the Pauline privilege.

[*Latin ed. p. 565*]

From the Sacred Congregation for the Inquisition, No. 565, dated the fifth day of the month, being the twenty-ninth, a report concerning these matters was made to the Most Holy Pope, Our Lord Leo XIII. And the same Holiness, with paternal benevolence, approved of the request, according to the votes of the Most Eminent Fathers. I. Mancini, Secretary of the Sacred Roman and Universal Church.

It is dispensed with, concerning the Catholica, that she be interrogated by the infidel, and the Bishop has the faculty of dispensing in ordinary cases. Granted on the 16th of August, 1895.

The Most Blessed Father, Bishop of Vhrbosnensis, humbly prostrates himself before Your Holiness and states: A certain Mahometan girl, who declared that she wished to become a Catholic, was forcibly taken by Mahometans and brought to a certain Mahometan, with whom she lived for a longer time against her will, and with whom she bore children. Afterwards, she fled from him, together with her children, to the Catholics, and, having embraced the Catholic religion, she received the sacrament of baptism. When questioned whether she had entered into marriage with the Mahometan, she replied that she had indeed inquired of him, asking that they be joined in marriage, and that he had responded that the marriage

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had already begun; but, according to the custom of the Mahometans, it cannot be demonstrated that the marriage has indeed begun. However, the Mahometan judge decreed that the marriage of which they speak should not be considered to have been entered into according to the laws of the Mahometans.

Since it requires little to be considered a valid marriage, when the Mahometan woman, although initially against her will, afterwards lived voluntarily with the Mahometan; and when the Mahometan affirms that he entered into marriage with her before competent persons, in her absence, the Bishop, the speaker, requests Your Holiness to grant a dispensation to Anne (which is the name the baptized Mahometan received) from the obligation to interrogate the Mahometan, if indeed a natural marriage exists between them, whether he wishes to cohabit without offense to the Savior, and to make use of the Pauline privilege.

Furthermore, the speaker requests for himself the faculty of dispensing with any Mahometan or Mahometan woman, as well as with any Jew.

[*Latin ed. p. 566*]

FROM THE SACRED CONGREGATION OF THE INQUISITION, 566, or Judaea, so that, without having questioned the party, and having been abandoned by the infidelity, it may be permitted to the abandoned party to enter into other marriages. On Thursday, the 16th of August, 1895. His Most Holy Lordship, Pope Leo, by the Divine Providence, XIII, in an audience granted to the Reverend Father, Assessor of the Holy Office, having heard the report concerning the aforementioned petition, and with the prior vote of the Most Reverend Consultors, and also with the suffrage of the Most Eminent Fathers, benignly granted that the Reverend Archbishop of Lisbon may dispense, as is necessary, concerning a Mahometan girl, about whom prayers are offered, from interrogation. Furthermore, the same Holiness benignly conceded to the same Archbishop the faculty of dispensing concerning the interrogation of spouses, in cases of infidelity, for all ordinary cases, provided that, of course, all previous diligence has been employed, even through public periodicals, to ascertain the whereabouts of the unfaithful spouse, and that it is clearly established, at least summarily and extrajudicially, that the absent spouse cannot be legitimately warned, or that the warning, within the time limit specified in the warning, has not signified his will. Contrary provisions notwithstanding. This is valid for five years. I. MANCINI - Notary of the Sacred Roman and Universal Church. FROM THE SACRED CONGREGATION OF RITES OF MILAN. The faculty is granted to celebrate, in the Ambrosian liturgy, as is done in Rome, the feasts of Saint Joseph, the Spouse of the B.V.M., and of the Annunciation of the same B.V.M., on the days of March 19th and 25th. Since, according to the liturgical constitutions currently in force in the Archdiocese of Milan, during the time of Lent, the feasts of all the Saints cannot be celebrated, and

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the Office of the Season with the respective Mass is performed, the feast of Saint Joseph, the Spouse of the B.V.M., has been transferred to December 12th, and the feast of the Annunciation of the same B.V.M. to the Sunday before the Nativity of the Lord. These feasts, however, which are more solemn, and which are always observed during the days of the 19th and 25th of March throughout the entire Church under a double precept, are not subject to any special or liturgical...

[*Latin ed. p. 567*]

From the Sacred Rites, number 567, these prayers, at that time, whether in the Breviary or in the Ambrosian Missal, are recited. Indeed, if either of them falls on a weekday, the priests abstain from celebrating, and the faithful from hearing the sacred rites, with no small sorrow, in the Ambrosian Church. Therefore, since the year 1886, many from the clergy and people of Milan have desired to petition the Holy See to obtain an Apostolic dispensation for the aforementioned feasts and days, from the more stringent, though not ancient, prescriptions of the Ambrosian Liturgy. These desires, increasing day by day, with the weighty reasons presented and the votes of men deeply versed in liturgical matters, led His Most Reverend and Eminent Lord, Andrew Ferrari, Archbishop of Milan, with the prior consent of the Most Reverend Metropolitan Chapter, to humbly present to the Most Holy Lord Pope Leo XIII, along with a suppliant letter, to obtain the aforementioned dispensation, and in the manner of the Roman Church, the Mother and Mistress of all Churches, with the Office and Mass of each feast written according to the solemnity of Sunday and the style of Lent, consonant with the Ambrosian Liturgy itself. It was decided by the same Most Holy Lord to entrust the examination of this matter to the Sacred Congregation of Rites, which, after carefully considering the exquisite desire of the liturgical commission, and after hearing the Reverend Father Gustavo Persiani, serving in the office of Promoter of the Holy Faith, and after mature deliberation, in a meeting held on the date indicated at the Vatican, and after the report of the Cardinal Prefect of the Sacred Rites, with the following question: "Whether, as is done in the Roman Rite, the feasts of Saint Joseph, Spouse of the Blessed Virgin Mary, and of the Annunciation of the same Blessed Virgin, on the days of March 19th and 25th, can henceforth be celebrated in the Ambrosian Liturgy, even if they fall on weekdays of Lent, using the same Offices and Masses that are revised and are presented in the preceding Decree, and observing the rubrics?" It was decided to answer: "Affirmatively in all respects, if it pleases the Most Holy [Pope]." On February 23, 1897. After all of the above was reported to the Most Holy Lord Pope Leo XIII by the undersigned Cardinal, His Holiness approved and confirmed the judgment of the aforementioned Sacred Congregation in all respects, on the same day, month, and year.

C. L. Í$Í CARD. ALOISI-MASELLA, Prefect.

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S. DIOMEDES PANICI, Secretary of the Sacred Rites.

[*Latin ed. p. 568*]

568 FA S. C. RITUUM PRECES. The Most Eminent Archbishop of Milan, addressed to this effect, to the Clergy established in the sacred orders, who follow the Ambrosian rite, that the obligation of reciting the entire Office of the Dead be relaxed.

Most Blessed Father Andrew, Cardinal Ferrari, Archbishop of Milan, humbly lays before Your Holiness what follows:

In the Ambrosian Liturgy, according to the custom hitherto observed, all clerics in the sacred orders throughout the entire season of Lent, except for Sundays and the Greater Week, are obligated to recite the entire Office of the Dead; and on many weekdays throughout the year, they are obligated to recite a portion of that Office.

Since the Ambrosian Breviary, especially on weekdays, is lengthy, and priests are burdened with other serious duties of their own order or office, and are unable to read the Breviary with the attention and devotion it deserves; the humble petitioner, with the consent of his Metropolitan Chapter, implores Your Holiness, that, while preserving the obligation of choral recitation of the aforementioned Office of the Dead, as it now stands, the obligation of reciting the same Office be relaxed for all clerics established in the sacred orders, from now on, with Apostolic permission; that is to say, that on the weekdays of Lent and on non-festive days, and during the Greater Week, these clerics may recite only the Vespers of the Dead, and be bound by no other rule, except that on the second of November, they shall complete the entire Office for the Dead.

MEDIOLANEN.

Our Most Holy Lord Leo XIII, having graciously received these petitions, reported by the aforementioned Cardinal, Prefect of the Sacred Congregation for Rites, and also considering the earnest desire of the Sacred Congregation itself, has deigned to grant that, from the date of this Rescript, all clerics established in the sacred orders who follow the Ambrosian rite, except for the choral office, may recite only the Vespers of the Dead on each day of Lent, except for festive days, and during the Greater Week, and may recite the entire Office for the Dead on the second of November, with the same dispensation granted to them from the burden of reciting either the entire or a portion of that Office during the course of this year; and this shall be done according to the rubrics.

Contrary provisions notwithstanding.

February 23, 1897.

C. CARD. ALOISI-MASELLA

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S. R. C. Prefect.

L. * S. DIOMEDES PANICI,

S. R. C. Secretary.

[*Latin ed. p. 569*]

569 APPENDIX IV. EXHIBITING THE ACTS OF THE APOSTOLIC SEE; OR, MATTERS WHICH HAVE BEEN DULY RECORDED FOR THE INFORMATION OF THE EDITOR OF THE PERIODICAL. S. C. S. Office, January 27, 1892 – Vicariate Apostolic of Victoria Nyanza. Concerning the baptism to be conferred upon a dying infidel who has received a heretical name. An infidel who has received a name belonging to the heretical sect of the Protestants has acquired some notion of the mysteries of the Most Holy Trinity, the Incarnation, and the Redemption; concerning true Catholic faith, however, he appears to be sincere, either because he has heard nothing about it, or because he has not yet sufficiently distinguished truth from error, since Christ is proclaimed from this place and from that. Having reached the point of death, he is not baptized by the heretics, since these are not concerned with this matter at all, or if they were to baptize, they seem to use an invalid formula; for in their books, in the vernacular language, they teach to baptize: "I baptize you in the name of the Father, and the Son, and the Holy Spirit" (1). – The question is: (1) From what arises the doubt concerning the validity of such a formula? The Superior of the Society of Missionaries of Algeria, in his letter of March 15, 1892, explained as follows: "Three questions are posed on this subject..." 1. Why did the Anglicans use this expression? "Because in the Luganda language, there is no word to translate the word 'pater' in the general sense. The word 'Kita' which they use, must always be followed by a possessive; 'Kita-nge,' father of me; 'Kita-o,' father of you; 'Kita-we,' father of him; 'Kita-fe,' father of us; 'Kita-mwe,' father of you; 'Kita-bwe,' father of them. – Used alone, the word 'Kita' means 'gourd' (cucurbita), and the baptismal formula in which it would appear without a possessive, would be translated: 'I baptize you in the name of the Gourd, etc.' It was therefore necessary, in order not to say something absurd, either to invent a word (which we have done, as I will say later), or to use the word 'Kita' determined by a possessive, as the Anglicans have done." 2. In what sense do the Anglicans understand the word 'Kita-fe' (Patris nostri)? "By using this expression, the Anglicans have no heretical intention. They wanted to translate the word 'Patris' in the orthodox sense, that is to say, as it designates the first person of the Holy Trinity." 3. Why do we believe that this expression makes the formula doubtful? "Because in the formula: 'In the name of the Father, and the Son, etc.,' the word 'Patris' applies only to the person of the Father, while 'Pater noster,' applied to God, designates the Creator God without distinction of

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persons. We have designated the person of the Father, in our catechisms, by a name that is invariable, derived from the Latin word 'Pater': 'Patri.' We use it only to designate..."

[*Latin ed. p. 570*]

570 APPENDIX IV. 1. Quid est, si unumquemvis fidelis non-Catholicus desideret baptismum? 2. Quid si sit moribundus? An potest ille baptizari, et an potest ille, ut catholice instruatur de dogmatibus, et de dogmate susceptionis, quatenus, in bona fide posito, instruatur, si tanta timor baptismi distrahatur, et ab bona fide excusat? R. Ad voluntatem haeret, 1, et 2 partem: si affirmat, baptismum suscipiendum; et dummodo ipse certo constet, et tempus suppetat, symbolo apostolico quod ante baptismi collationem coram eo recitetur; et detur instructio. IV, 1 Augusti 1860 ad R. P. D. Vicarium Apostolicum Tche-Kiang: (1) « Explorata res est etc. » addito quod, absolute; si vero catechumenus dubie invalide fuerit baptizatus, baptizetur sub conditione. "Hoc verbum, una cum aliis, est perfecte comprehensum, sicut et multi termini religiosi quos mutuati sumus ex lingua Ecclesiae: Eucharistia, etc." (1) Ad commodum lectorum, citatur: Instructio S. Congregationis Consilii, 6 Iunii 1860 (ad Vic. Ap. Tche-Kiano). In foliis ab Exc. Tua ad S. Congregationem de Propaganda Fide transmissis, exponebatur quod quidam missionarius saepe interrogabatur de conferendo baptismum adultis moribundis, qui, licet profiterentur se libenter baptismum accipere, et se vere renuntiare diabolo, et credere in Deum, et poenitere pro praeteritis peccatis, tamen, ex circumstantiis, maximum dubium relinquebant de sinceritate talium dispositionum. Ipse vero missionarius, volens ex una parte reverentiam Sacramenti, et ex altera parte salutem aeternam morituri, conferre baptismum sub hac conditione, si tu vere dispositus es, expresse intendens, se non baptizare si bonae dispositiones desint. Hinc quaerebatur: 1. Utrum talis modus conferendi baptismum licitus sit vel non. Praeterea, exponebatur quod nonnulli ex illis infirmis, baptizati sub huiusmodi conditione, postea superviverunt, imo et aliquoties e sua infirmitate penitus convalescerunt, et poterunt rectius disponi, et quaerebatur: 2. Utrum ipsi omnes rursus baptizari debeant, saltem sub hac conditione, si non fuerunt baptizati. Sacra Congregatio Supremae et Universalis Inquisitionis, cuius iudicio haec dubia relata sunt, maturo examine super iisdem adhibito, sub die IV Augusti 1870, respondendum mandavit praesenti instructione. « Explorata res est tres dispositiones in adulto requiri ad Baptismum rite suscipiendum: fidem nempe, poenitentiam et intentionem illum percipiendi. Fides profecto necessaria est qua adultus debet esse sufficienter, iuxta propriae intelligentiae mensuram, de mysteriis Christianae Religionis, et ea firmiter credere; et necessaria eadem est poenitentia qua debet peccata sua dolere, et actum elicere vel contritionis, vel attritionis: ac tertio necessario requiritur intentio, seu voluntas suscipiendi hoc Sacramentum, eaque

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deficiente, non imprimitur in adulto baptismalis character. At enim vero fides et poenitentia in adulto requiruntur, ut licite sacramentum suscipiat, et fructum sacramenti consequatur: intentio vero necessaria est ad illud valide con-

[*Latin ed. p. 571*]

APPENDIX IV. 571 S. C. S. Officii, 9 July 1881, Concerning Sacred Oils and the Sacrament of the Eucharist. The Most Reverend General Inquisitors, in the Congregation of Sacred Affairs, on the 7th of the aforementioned month, considered a report from the Monsignor Vicar General in the diocese of Orleans, by which he brought to the attention of the Holy See the almost universal falsification and adulteration of olive oil; and it being known that this also occurs with wine, and even with unleavened bread, to the extent that it compromises the validity of those Sacraments which require such substances as matter; they decreed that this Sacred Congregation (of Propaganda) in its responses to the Bishops concerning the state of the churches, when the opportunity arises, should advise them to exercise the utmost caution in the purchase of these same substances for use in the Sacraments. Furthermore, it is to be observed that he who is baptized as an adult without faith and repentance, is indeed baptized illicitly, but validly; and conversely, he who is baptized without his will does not receive the Sacrament licitly or validly. With these premises, it will be easy to recognize that the missionary in the aforementioned case did not act properly, when administering baptism to a dying adult, if he did not have the dispositions required for licitly administering baptism, and those which are necessarily required for it to be validly received. For indeed, when death is imminent, it is doubtful whether the adult is sufficiently instructed in the mysteries of the faith, and whether he has truly believed sufficiently, and it is doubtful whether he sincerely repents of his past life; the Sacrament must be administered to him absolutely, without any condition. However, if there is doubt as to whether he truly intends to receive baptism, and if, after a diligent examination of this intention, doubt still remains, baptism should be conferred under the condition that he is capable of baptism. Nevertheless, so that no rule may be lacking for such a missionary, the decree of the aforementioned Congregation Supremae et Universalis Inquisitionis, promulgated on the fifth day of the week before the Most Holy Sacrament, on August 23, 1703, concerning a question proposed by the Bishop of Quebec, is appended here. Furthermore, the missionary did not act properly when conferring baptism under a condition, if he intended not to baptize, setting aside the good dispositions in the one receiving baptism: for in this case, the missionary must only intend to baptize to the extent that the recipient is capable of baptism, that is, that he sincerely desires to receive it. Finally, with regard to the second doubt, it must be noted that baptism should not be administered under a

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condition indiscriminately and rashly, but only when there is a prudent and well-founded doubt as to whether someone has been validly baptized, as is stated in the Roman Catechism, page 2, on the Sacrament of Baptism, number 57. Moreover, if these doubts are not sufficient for the missionaries to resolve, they will bring them to the attention of the aforementioned Holy Congregation, so that, after all circumstances have been considered, they may be removed.

[*Latin ed. p. 572*]

572 APPENDIX IV. From the Sacred Congregation of the Holy Office, May 4, 1887 – Doubts concerning wine. To prevent the corruption of wine, two remedies are proposed: 1. A small quantity of eau-de-vie should be added to the natural wine. 2. The wine should be boiled until it reaches a temperature of sixty-five degrees. – The question is asked: Are these remedies permissible for the wine used in the Sacrifice of the Mass, and which is preferable? Answer: The wine described in the second instance is to be preferred. From the Sacred Congregation of the Holy Office, April 15, 1891 – From the Archbishop of Tarragona. Doubts concerning wine for the Sacrifice of the Mass. The sweet wine commonly used for the Sacrifice of the Mass in Spain naturally contains alcohol in a proportion exceeding twelve parts per hundred. – The questions are asked: 1. Can the mixture of ten parts of alcohol per hundred be continued, as experience shows, as absolutely necessary for the preservation of the sweet wine? 2. Can wine prepared in this way be used in the Sacrifice of the Mass? Answer: Negatively, with regard to the Sacrifice of the Mass. From the Sacred Congregation of the Holy Office, June 25, 1891 – From the Apostolic Vicar of Tche-li, Southern China. Doubts concerning wine for the Sacrifice of the Mass. Since it is difficult to obtain good wine in Europe, and even more difficult to transport it to China at a reasonable price without it being adulterated on the way, for many years now, it has seemed safer and easier to the missionaries of this Vicariate to produce wine for the Sacrifice of the Mass in this very region. However, the grapes found in the northern parts of the Chinese Empire contain a very small amount of sugar; consequently, the wine produced from these grapes for the Sacrifice of the Mass contains only a small proportion of alcohol, and therefore can scarcely be preserved, especially considering the long and intense summer heat, which greatly favors corruption. The inconvenience is removed, and wine that is safely preservable, and also pleasing to the eye, taste, and smell, is obtained, if ten pounds of sugar from the sugarcane (that is, from a grassy plant) are added to one hundred pounds of grapes that have been recently crushed.

[*Latin ed. p. 573*]

APPENDIX IV. 573. Botanice, *saccharum officinarum*, Gallice vulgo *canne sucre* nuncupata, haecque massa deinde more solito fermentetur.

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Quae cum deferbuerit, ex centum libris massae (novem sacchari libras iuxta exposita continentibus) obtinentur sexaginta septem vini librae, quae ut ex calculo chimico coniicere licet, practice ad summum quatuor libras cum dimidia (id est, circiter quintam decimam ponderis totalis partem) alcoolis ex saccharo geniti continent. Aliis verbis, supradicta operatione obtinetur vinum ex vite verum, cuius centum partes sex vel septem alcoolis heterogenei seu non ex vite producti admixtas habent. Quam praxim eo libentius retinuimus quo maior in dies evadit nobis impossibilitas spiritum vini (alcool) ex vite genitum comparandi. Nunc autem, aliquo exurgente dubio, humiliter quaeritur: 1. An haec praxis ad obtinendum vinum pro Missae sacrificio tuta sit. Si negative: 2. An valida? 3. Quid si huiusmodi vinum adhibitum fuerit in Missis, ex iustitiat R. Vino pro sacrosancto Missae sacrificio addendum potius esse spiritum seu alcool qui extractus fuerit ex genimine vitis, et cuius quantitas una cum ea, quam vinum de quo agitur naturaliter continet, haud excedat proportionem duodecim pro centum. Huiusmodi vero admixtio fiat quando fermentatio sic dicta tumultuosa defervescere inceperit; et ad mentem: *La mente è che non potendo i missionarii procurarsi da loro stessi lo spirito di vino distillandolo dal vino del paese, ne estraggono il vino, oppure mescolino l'uva passa coli'uva del paese, facendola insieme fermentare.* S. C. S. Officii 13 Ian. 1892. — Dubium quoad eleemosynam missarum. Utrum colligentes eleemosynas maioris pretii pro Missis, si eas celebrari faciunt in eodem loco ubi collegerunt, pro minori pretio, hanc censuram (1) incurrant, nec ne. R. Affirmative ad primam partem; Negative ad secundam. (1) De hac censura loquitur Const. Apostolicae Sedis; quam habes Vol. V, 287 Acta S. Sedis.

[*Latin ed. p. 574*]

574. S. C. APPENDIX IV. S. Officii 29 Iulii 1891 — Concerning absolution granted by a priest not approved. Those who believe that a valid absolution was granted in articulo mortis by a priest not approved should not be troubled, even when an approved priest could easily have been called or was present; and those who believe that a valid absolution was granted in the same articulo mortis for reserved sins, whether simply or with a censure, by a priest who does not have jurisdiction in reserved matters, even if an approved priest having said jurisdiction could easily have been called or was present.

S. C. S. Officii 13 Ian. 1892 — Regarding the one absolving a complice. Whether those who absolve a complice in a heinous sin with crass and supine ignorance incur this excommunication (1), or not. Response: In this case, it is incurred.

S. C. S. Officii 17 Iunii 1891 — Concerning reserved cases and censures. The Sacred Congregation of the Inquisition, on the date of 30 July 1886, responded to the following question: "I. Can it still be safely maintained that

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absolution for reserved cases and censures, even those specially reserved to the Pope, should be referred to the Bishop or to any approved priest, when the penitent is in a situation of personal impossibility of reaching the Holy See? — II. To the extent that the answer is negative, is recourse to be made, at least by letter, to the Most Eminent Cardinal Penitentiary for all cases reserved to the Pope, unless the Bishop has a special indult, except in articulo mortis, to obtain the faculty of granting absolution?" The response was given and approved and confirmed by the Pope: To I. Considering the practice of the Holy Penitentiary, especially since the publication of the Apostolic Constitution, most holy memory, of Pope Pius IX, which begins with the words "Apostolicae Sedis": Negative. — To II. Affirmative; but in more urgent cases, in which absolution cannot be delayed without the danger of grave scandal or infamy, which burdens the conscience of confessors, absolution can be granted, with the penalties prescribed by law, even for censures specially reserved to the Supreme Pontiff, under the penalty of incurring those same censures, unless, at least within one month, recourse is made by letter and through the medium of the Confessor to the Holy See."

(1) Concerning which, in the Apostolic Constitution under the title "Excommunicationes latae sententiae, speciali modo Romano Pontifici reservatae," Vol. V, 287, Acta S. Sedis.

[*Latin ed. p. 575*]

APPENDIX IV. 575 When, indeed, doubts have arisen among the doctors concerning these responses, the following are proposed to the Holy Congregation for the Inquisition for resolution: 1. Whether the response concerning the first case is also valid for the case when the penitent has been perpetually hindered from personally going to Rome? 2. Whether the response concerning the second case, with the clause "under penalty, however, of incurring again the same censures, etc.," refers only to absolution from censures and cases specially reserved to the Holy See, or also to absolution from censures and cases simply reserved to the Pope? Finally, it is asked: 3. Whether modern authors, after the Apostolic Constitution *Apostolicae Sedis* (contrary to common law, chapter *Eos qui*, 22, section 1; chapter *Ea noscitur*, 59, section 39; and contrary to the Roman Ritual, *De Poenit.*, title III, chapter 1, number 23), correctly teach that, if someone, at the point of death, has been absolved by any confessor from any censures, whatever they may be, then only the obligation of presenting oneself to the Superior upon regaining health arises, if it concerns absolution from censures specially reserved to the Pope; or whether such recourse to the Superior is also necessary in the case of absolution from censures simply reserved to the Supreme Pontiff? To 1: Affirmative. To 2: Negative regarding the first part; affirmative regarding the second part. To 3: Affirmative regarding the first part, negative regarding the second part, according to

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the resolution of February 28, 1882. — Approved by the Most Holy Father. Sacred Congregation of the Holy Office, January 13, 1892. What are the acts promulgated by the Apostolic See? 1. Whether the acts promulgated by the Holy Apostolic See (1) designate only those acts which originate immediately from the Supreme Pontiff, or also those which originate mediately from the Holy Congregations. 2. Regarding absolution from censures specially reserved at the point of death, it is doubted whether the sick person, if he recovers, and does not fulfill the obligation of presenting himself to the Superior, will incur the same excommunication again, or not. Response: To 1: Negative regarding the first part; affirmative regarding the second. (i) Concerning those matters mentioned in the Apostolic Constitution *Apostolicae Sedis* under the title *Excomm. latae sententiae Rom. Pontifici speciali modo reservatae*. Recueil, Vol. V, 287.

[*Latin ed. p. 576*]

576 APPENDIX IV. Ad 2. Let the decree be given, from the Sacred Congregation of the Holy Office, of August 19, 1891, concerning the following doubts: "I. Whether the obligation of observing the mandates of the Holy See, imposed by an Apostolic Bull, is subject to the penalty of excommunication, or not. — II. Whether the obligation of observing the mandates of the Holy See, in the sense of the Apostolic Bull, means the same thing as the obligation of presenting oneself before the Supreme Pontiff, or whether it should be distinguished from it. Response: — To I, affirmatively to the first part, negatively to the second. — To II. The obligation of observing the mandates of the Church (obligation) implies a burden, either by itself, or through recourse to the Supreme Pontiff." Sacred Congregation of the Holy Office, May 15, 1878 - Concerning Extreme Unction. Concerning the blessed oil for priests. The oil blessed by a priest is entirely unsuitable for the celebration of the Sacrament of Extreme Unction: and even in the greatest necessity, it cannot validly be used. Sacred Congregation of the Holy Office, August 26, 1891 - Concerning the impediment of affinity. Regarding an impediment of affinity. Since a case has arisen within my Vicariate, concerning neophytes, and regarding which my missionaries are not of the same opinion, and which has been presented to me, I have considered it... prudent to humbly request a solution from the Holy See. Caius, still living in infidelity, has carnal relations with a woman; then, becoming contrite, and renouncing idolatry, he is properly instructed and baptized. Having received baptism, can Caius legitimately marry the sister of that woman with whom he lived in infidelity? Response: The affinity which is naturally contracted through an illicit union, whether it be a licit or illicit union, is not an impediment to marriages which are entered into while in infidelity; however, it does constitute an impediment to marriages entered into after baptism, by which the baptized become subjects of the Church, and are

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therefore subject to its laws.

[*Latin ed. p. 577*]

577 FROM THE CONSISTORY ACTS Concerning the Consistory held on April 19, 1897. The Most Holy Father, following the preceding Allocution, announced to the Cardinals of the Holy Roman Church: from the order of Priests, the Reverend Father Joseph Mary Martin de Herrera y de la Iglesia, born in Aldeadavila, Diocese of Salamanca, on August 26, 1835, as Archbishop of Santiago de Compostela; — the Reverend Father Peter Hercules Coullié, born in Paris on March 14, 1829, as Archbishop of Lyons; — the Reverend Father Joseph Gubernium Labouré, born in Achiet le Petit, Diocese of Arras, on October 27, 1841, as Archbishop of Reims; — the Reverend Father William Mary Roman Sourrieu, born in Aspet, Archdiocese of Toulouse, on February 27, 1825, as Archbishop of Rouen. Afterwards, the Most Holy Father proposed the following sees: the Cathedral Church of Palestrina, vacant due to the death of the Most Reverend Angelo, Cardinal of the Holy Roman Church, Bianchi, the last Bishop of that see, who died outside the Roman Curia; which is desired by His Eminence and Reverend Lord Camillus, with the title of Saint Mary Transpontine, of the same Holy Roman Church, Cardinal Mazzella, having relinquished the aforementioned priestly title. The titular Archiepiscopal Church of Nisibis, vacant due to the death of the Most Reverend Joseph Giusti, the last Archbishop of that see, who died outside the Roman Curia, with the favor of the Reverend Father Frederick Pizza, Archbishop of Siponto and Administrator of Vieste. The Metropolitan Church of Naples, vacant due to the death of the Most Reverend William, while still living, Cardinal Sanfelice, the last Archbishop of that see, who died outside the Roman Curia, with the favor of the Reverend Father Vincent Mary Sarnelli, Bishop of Stabia, or Castrum Maris. The titular Archiepiscopal Church of Chalcedon, vacant due to the promotion of the Reverend Father Francis Cassetta to the titular Patriarchal Church of Antioch of the Latins, with the favor of the Reverend Father Peter Facciotti, Bishop of Ferentino. The titular Archiepiscopal Church of Nicomedia, vacant due to the promotion of the Reverend Father Charles Caputo, Bishop of Aversa, to the titular Archiepiscopal Church of Siponto, with the administration of the See of Vieste, vacant due to the translation of the Reverend Father Frederick Pizza to the titular Archiepiscopal Church of Nisibis, with the favor of the Reverend Father Paschal Gagliardi, a priest of the diocese.

[*Latin ed. p. 578*]

578 FROM THE CONSISTORY ACTS: Tricarico. He, born of legitimate, Catholic, and honorable parents in the diocese of Tricarico, and having reached the thirty-eighth year of his age, having received a doctoral degree in philosophy and in sacred theology, having previously served as

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a synodal examiner, professor of dogmatic theology in the major seminary, and master of piety in the minor seminary, has now resigned. The Cathedral Church of Giennen is vacant, due to the death of the Most Reverend Emmanuel Maria Gonzalez Sánchez, the last bishop of that diocese, who died outside the Roman curia, with the favor of the Reverend Father Victoriani Guisasola and Menendez, Bishop of Osma, for presentation to the Most Serene Queen, Regent of the Catholic Kingdom. The Cathedral Church of Sacien is vacant, due to the death of the Most Reverend Francis Maria Trégaro, the last bishop of that diocese, who died outside the Roman curia, with the favor of the Reverend Father Claude Bardel, Bishop of Paris, for nomination by the most illustrious Felice Faure, President of the Gallic Republic. The Cathedral Church of Ferentino is vacant, due to the promotion of the Reverend Father Peter Facciotti to the titular archbishopric of Chalcidensis, with the favor of the Reverend Father Dominic Bianconi, priest of Priverno. He, born of legitimate, Catholic, and honorable parents in Priverno, and having reached the forty-fifth year of his age, having served as an examiner pro-synodal, a deputy of the seminary, a spiritual director of several pious societies, and a canon penitentiary of the Cathedral Church, has now resigned. The Cathedral Church of Trivento is vacant, due to the promotion of the Reverend Father Julius Vaccaro to the titular archbishopric of Ancyrana and the coadjutor see with future succession to the metropolitan sees of Tranen and Barolen, with the favor of the Reverend Father Charles Pietropaoli, priest of the archdiocese of L'Aquila. He, born of legitimate, Catholic, and honorable parents in the place commonly called Roccadicambio in the archdiocese of L'Aquila, and having reached the fortieth year of his age, having obtained a doctorate in sacred theology in Rome. The Cathedral Church of Aversa is vacant, due to the promotion of the Reverend Father Charles Caputo to the titular archbishopric of Nicomedia, with the favor of the Reverend Father Francis Vento, priest of Naples. He, born of legitimate, Catholic, and honorable parents in Naples, and having reached the forty-ninth year of his age, having been examined by the clergy and having served as a visitor of the archdiocese, has now resigned. The churches of Saint Angel Lombardorum and Bisaccia, perpetually and canonically united, are vacant, due to the death of the Most Reverend Nicholas Lorusso, the last bishop of those dioceses, who died outside the Roman curia, with the favor of the Reverend Father Julius Tommasi, priest of the diocese of Avezzano. He, born of legitimate, Catholic, and honorable parents in the land commonly called Sconzano in the diocese of Avezzano, and having reached the forty-second year of his age, having served as a canon and parish priest of the Cathedral Church of Avezzano, pro-rector of the seminary, examiner pro-synodal, and director of the pious Unions of the Daughters of Mary and the Third Order of Saint Francis, has now resigned. The Cathedral Church of Boiano is vacant, due to the death of the Most Reverend Francis Macarone, with the favor of

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the Reverend Father Felice Gianfelice, priest of the archdiocese of L'Aquila. He, born of legitimate, Catholic, and honorable parents in the archdiocese of L'Aquila, and having reached the fifty-sixth year of his age, for many years exercised the office of archpriest and parish priest in the larger church commonly called Cittaducale in the archdiocese of L'Aquila. The Cathedral Church of Conversano is vacant, due to the promotion of the Reverend Father Casimir Gennari, Assessor of the Holy Office and the Congregation, to the archbishopric.

[*Latin ed. p. 579*]

FROM THE CONSISTORY ACTS 579: In Naupactus, with the favor of the Reverend Father Anthony Lambert, a priest of the archdiocese of Bari. He was born in Bari, in the archdiocese, of legitimate, Catholic, and noble parents, and having attained the forty-fourth year of his age, he received the doctoral degree in philosophy, sacred theology, and canon law. He was a Canon Penitentiary of the Metropolitan Church and subsequently a Canon Theologian, and he has now resigned. The Cathedral Church of Guastalla was previously vacant, due to the promotion of the Reverend Father Peter Respighi to the Archiepiscopal See of Ferrara (for the Reverend Father Henry Grazioli was appointed to the same office, but having not yet taken possession, he bid farewell to him); with the favor of the Reverend Father Andrea Sarti, a priest of the diocese of Massa Lubrense. He was born in the diocese of Massa Lubrense, of legitimate, Catholic, and honorable parents, and having surpassed the forty-seventh year of his age, he received the doctoral degree in sacred theology and was appointed Professor of sacred theology in the seminary for clerics in the diocese of Massa Lubrense. He has been examined for the synod, is the Archpriest of the Cathedral Church, and has been the general vicarious in spiritual matters until now, and he has now resigned. The Cathedral Church of Monreale, in the province of Piedmont, was vacant due to the death of the Most Reverend Placido Pozzi, the last bishop, who died outside the Roman curia, with the favor of the Reverend Father John Baptist Ressia, a priest of the archdiocese of Turin. He was born in the town of Tigone, in the archdiocese of Turin, of legitimate, Catholic, and honorable parents, and having attained the forty-ninth year of his age, he administered the parish of the locality commonly called Briche' for several years, until he resigned as Canon and Parish Priest of the Cathedral Church of Pinerolo. The Cathedral Church of Alexandria, in the province of Piedmont, was vacant due to the death of the Most Reverend Peter Lucundi Salvai, the last bishop, who died outside the Roman curia, with the favor of the Reverend Father Joseph Capecci, of the Order of the Eremites of Saint Augustine, a priest of the diocese of Auxima. He was born in the locality commonly called Castelfidardo, in the diocese of Auxima, of legitimate, Catholic, and honorable parents, and having attained the fiftieth year of his age, he was

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elected Provincial Prior in Liguria, and was examined for the synod in the city of Genoa, and he has now resigned as President of the Academy of Saint Thomas, Parish Priest of Saint Mary of Consolation, and also as Dean of the college of parish priests of the same city. The Cathedral Church of Oxomen was vacant due to the translation of the Reverend Father Victor Guisasola and Menendez to the Cathedral See of Gienn, with the favor of the Reverend Father Joseph Mary Garcia Escudero and Ubago, a priest of the diocese of Calagurita, for the presentation of the Most Serene Queen Regent of the Catholic Kingdom. He was born in the locality called Badaren, in the diocese of Calagurita, of legitimate, Catholic, and honorable parents, and having attained the fifty-first year of his age, he received the degree of Doctor of Sacred Theology, and having served as Professor of philosophy and sacred theology in the seminary in the city of Logroño, he is currently the Abbot of the Collegiate Church there, and he has now resigned. The Church of Socorro in the Republic of Colombia in America, which was elevated to the status of a cathedral by a decree of the Sacred Congregation of the Consistory, given to the Apostolic See on March 20, 1895, and which was vacant since its original erection, with the favor of the Reverend Father Evarist Blanco, a priest of the diocese of Neo-Pampilon. He was born in the locality commonly called San Miguel, in the diocese of Neo-Pampilon, and having attained the forty-fourth year of his age.

[*Latin ed. p. 580*]

580 FROM THE CONSISTORY ACTS, having been appointed, in the second year of his life, to the office of parish priest, he exercised this ministry for several years in the places commonly called Tequia and San Andres, and also held the direction of the Leonini College in the city of Bucaramanga. He has now relinquished the office of parish priest and external vicar of the Malacatana Church in the Neo-Pampilonensi diocese. The Cathedral Church of Macaoen is vacant, due to the death of the Most Reverend Anthony Joachim de Medeiros, the last bishop, who died outside the Roman curia, by the favor of the Most Reverend Joseph Emmanuel de Carvalho, a priest of the Viseu diocese, for the presentation of a sermon to the faithful King of Portugal and the Algarves. He, born of legitimate, Catholic, and honorable parents in the place commonly called Tourigo, in the Viseu diocese, and having reached his fifty-third year, having relinquished the professorship of ecclesiastical sciences in the Viseu seminary and in that episcopal curia, was co-opted among the honorary chamberlains of His Holiness. The titular episcopal see of Gazen, under the Caesariensi archbishop, is vacant, due to the promotion of the Most Reverend Henry Vande Wetering to the metropolitan see of Ultraiectensem, by the favor of the Most Reverend Paul Schinosi, a priest of the Beneventana archdiocese. He, born of legitimate, Catholic, and honorable parents in the Beneventana archdiocese, and having reached his seventieth year, was co-opted among

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the closest chamberlains of His Holiness, and has relinquished the office of archpresbyter canon of the Beneventana metropolitan church. The titular episcopal see of Marcianen, under the Myrensi archbishop, is vacant, due to the death of the Most Reverend Henry Alphonsus Mary Joosten, the last bishop, who died outside the Roman curia, by the favor of the Most Reverend Ernest Kutrovatz, a priest of the Iauriensis diocese, who was also appointed as an auxiliary to the Most Reverend John Zalka, Bishop of Iauria. The Most Reverend Ernest Kutrovatz, born of legitimate, Catholic, and honorable parents in the village commonly called Siglos, in the Iauriensis diocese, and having surpassed his fifty-sixth year, having performed the office of parish priest for many years, was subsequently appointed canon of the Iauriensis cathedral church, and has now relinquished that office. The titular episcopal see of Theodosiopolis, under the Caesariensi archbishop, is vacant, due to the promotion of the Most Reverend John Glavina to the titular archiepiscopal see of Pelusia, by the favor of the Most Reverend Vincent Di Giovanni, a priest of the Mazariensis diocese. The titular episcopal see of Samosata, under the Hierapolitan archbishop, is vacant, due to the translation of the Most Reverend Henry Grazioli to the Guastalla cathedral church, by the favor of the Most Reverend Charles Gustav Walravens, a priest of the Tornacensis diocese; who was also appointed as an auxiliary to the Most Reverend Isidore Joseph du Rousseaux, Bishop of Tournay. The Reverend Doctor Charles Gustav Walravens, born of legitimate, Catholic, and honorable parents in the city commonly called Enghien, in the Tornacensis diocese, and having surpassed his fifty-fifth year, was for fourteen years a lecturer in moral theology in the major seminary of Tournay. He subsequently relinquished the office of president of the same Tornacensis seminary and canon of the cathedral church. The titular episcopal see of Martyropolitan, under the Anuden archbishop, is vacant, due to the promotion of the Most Reverend Joachim Larrian Gandarillas to the titular archiepiscopal church of Anazarba, by the favor of the Most Reverend Gustav Charles Majláth, a priest of the Quinquecclesien diocese, who was also appointed as a coadjutor.

[*Latin ed. p. 581*]

FROM THE CONSISTORY ACTS 581, concerning the future succession of the Reverend Father Francis Lönhart, Bishop of Transylvania. The Reverend Gustavus Carolus Majláth, born of legitimate, Catholic, and noble parents in the town commonly called Bakocza, in the diocese of Quinquecclesia, having reached the age of thirty-three years, having received the doctorate in sacred theology, and having served for approximately ten years as Prefect of the seminary in Gran, and until recently as Administrator of the parish of the city of Komaron, has been appointed to the Cathedral Church of the City of Victoria, or Tamaulipas, in the Mexican province of Northern America, which was previously vacant, with the favor of the Reverend

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Philemonis Fierro, a presbyter of the archdiocese of Durango. He was born of legitimate, Catholic, and honorable parents in the city of Durango, and having surpassed the age of thirty-seven years, he had previously served as Professor of philosophy, and also of sacred theology and canon law, in the archiepiscopal seminary, and also as a parish priest for several years, and finally resigned from the position of Canon of the Metropolitan Church. The archiepiscopal titular church of Damascus is vacant, by the assignment of the title of Saint Mary above Minerva, made to the Most Reverend and Most Reverend Lord Seraphino, Prefect of the Sacred Congregation, by His Holiness, with the favor of the Reverend Father John Joseph Keane, titular Bishop of Jassy. The archiepiscopal titular church of Naupactus is vacant, by the assignment of the title of Saint Mary of the Heavenly Coffer, made to the Most Reverend and Most Reverend Lord Francis, Prefect of the Sacred Congregation, by His Holiness, with the favor of the Reverend Father Casimir Gennari, Bishop of Conversano. After these announcements, Our Most Holy Father announced that, through letters in the form of a Brief, the following prelates had recently resigned: Sebastopolitan, John Butt; Salopiensem, Samuel Webster; Rossensem, Dionysius Kelley; Buffolensem, James Quigley; Cheylunensem, Thomas Lenihan; Wilmingtoniensem, John Monaghan; Mobiliensem, Edward Allen; Allahabadensem, Charles Joseph Gentili; Germanicopolitanum, Augustus Dontenville; Zoarenum, Patrick Dusser; Poglensem, Joseph Légal; Tabracensem, Henry Streicher; Tuburbitanum, Francis Gerboin; Tuitanum, John Adam; Ticeliensem, Aemilius Allgeyer; Tenchirensem, Ambrose Van Baors; Thibonitanum, Joseph Dupont; Tiniadensem, Peter Giraudean; Theodosiopolitanum, Vincent Di Giovanni.

[*Latin ed. p. 582*]

582 FROM THE HOLY CONGREGATION OF THE COUNCIL OF GRAN. DISPENSATION FOR MARRIAGE, September 12, 1896. Session 12, chapter 5, Concerning the reform of marriages. November 25, 1889, after the customary announcements, Theresia, 22 years of age, before her own parish priest in the village of Bath, in the Archdiocese of Gran, refused Stephen, who was 32 years of age. The marriage, which was contracted under unhappy circumstances, had a most unfortunate outcome. Indeed, as Theresia herself recounts in a pitiable letter to the Ordinary of Gran: "A brief acquaintance, barely six weeks, preceded the marriage contract between myself and Stephen, who at that time was a security guard in Bath. I, who loved Joseph Radza and with whom I had even entered into an engagement, wearing his engagement ring, felt no inclination towards Stephen; on the contrary, my parents had a strong desire that I should marry at the same time as my brother, so that our marriages would be held on the same day. The reason and motive that moved my parents in this desire was that, by me leaving home as a bride, I would make room for my brother's wife to come to our family home." And she adds that

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she was unable to resist the constant exhortations of her parents, and that she repeatedly made it clear to them that she would enter into marriage with Stephen without her consent. After the marriage, the spouses lived together for only two days, and after spending the first night sleepless among the wedding festivities, they slept in the same bed for only one night, but separately, as is asserted; Stephen.

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 583*]

STRIGONIEN. In the year 1883, the bride, her mother, and Theresia lay down to rest, each in a separate bed. Early the following morning, Stephen departed from Bath, seemingly with the intention of abandoning his wife, but claiming he was going to oversee the construction of a house in the place called Vóg-Selja, where he intended to establish a permanent residence. After Stephen's departure, he never returned to his wife, but, after four months had passed, he sent her an open postal letter, stating that he was leaving for America. When Theresia subsequently received no further news of her husband, and deeply distressed by her pitiable condition, in the year 1893, with the advice and assistance of a certain lawyer, she summoned Stephen to appear before the judge of the nobility in Bath, believing that if he did not appear, he could be declared legally dead, and she could then proceed with other marriage arrangements. Stephen appeared before the judge and also visited the Valach family's inn, but he did not speak to his wife; and without further delay, he left Bath again, giving no further indication of his whereabouts. The unfortunate woman, seeing herself so shamefully deceived, was almost driven to despair, and, as Archbishop Emus of Strigonien reports, "following the counsel of wicked men, she was already contemplating apostasy from the faith, so that, being declared legally free by the civil court, she might be able to enter into new marriages, fulfilling her intended vows." Before carrying out this intention, she consulted her own parish priest, explaining her situation; he, with his prudence and zeal, showed her the right path, and was the author of the counsel to petition for an apostolic dispensation regarding the marriage that had been contracted but not consummated. Then Theresia appealed to Archbishop Emus of Strigonien, requesting that the Supreme Pontiff grant her a dispensation concerning the marriage that had been contracted but not consummated. The Strigonien Consistory immediately initiated a process to investigate the lack of consummation, examining the plaintiff, several witnesses, and two doctors, who, after a thorough examination of Theresia's virginity, ordered by the judge, gave affirmative testimony.

[*Latin ed. p. 584*]

584 STRIGONIEN. Having brought the process to its conclusion, the

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Archbishop learned from a recent decision of the Sacred Congregation in Warsaw that, on July 16, 1894, such processes could not be conducted by Ordinaries without a delegation from the Pope (1); therefore, he requested that the acts be examined and that a remedy be granted for the lack of delegation; and furthermore, he states that all those causes are present "which suggest, indeed, urgently urge, a dispensation from a valid marriage," and concludes: "I commend this unfortunate woman to the grace of Your Holiness with the greatest urgency, for it is a question of saving the soul of a woman, exposed to continual danger of incontinence and apostasy." The Sacred Congregation remedied the lack of delegation and, considering the petitioner's need, granted permission for the cause to be presented economically. SYNOPTIC DISCUSSION. THEOLOGIAN'S OPINION. After briefly summarizing the historical facts and the subsequent process, the consultant considered that the requested dispensation could be granted, or, better, that the Sacred Congregation could issue a favorable advisory opinion for its granting by His Holiness. He stated that this was based on two principles, as is customary in such cases of grace, namely, proving the invalidity of the marriage and the existence of causes for its dissolution. Meanwhile, he deemed it worthwhile to note certain points regarding the evidentiary process. Indeed, he himself, to remain silent about the lack of the Apostolic delegation, which has now been remedied, cannot say that the rest was perfectly in accordance with the procedures of the Benedictine Constitution *Dei Miseratione* and the Instructions of the Sacred Congregation of 1840. The gloss notes that several irregularities were found. In the examination of the woman's body, midwives were not present, nor was an honest matron and a bath of warm water used; there was no formal interrogation of the woman, but only a benevolent elicitation from her (1).

(1) *Recole*, Vol. XXVII, 141.

[*Latin ed. p. 585*]

STRIGONIEN. 585. After certain inquiries and information presented by the defender of the marriage: this favorable assessment was not immediately confirmed by the testimony under oath, but only after a month, or on November 8, 1894, whereas the confession had taken place on October 8 of the preceding year. No witnesses of the seventh hand were called on the part of the husband. Finally, the questions for the witnesses were not put by the defender of the bond, but by the plaintiff herself. However, these matters are not of such importance as to be able to move me from the opinion already expressed. For in such summary and favorable proceedings, that rigor is not observed which is usually required in proceedings concerning the nullity of marriage. In cases of dispensation concerning a marriage that is valid but not consummated, it suffices that there be, from the procedural records, moral certainty of the lack of consummation and of the reasons for granting a dispensation, which, in the case in question,

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I have demonstrated to be present. See Cosci de separatorii coniung. lib. 3 cap. 2 n. 126: "In a summary and favorable proceeding for dispensation, mere conjectures are sufficient, and supplementary and evidentiary elements which are to be weighed and considered by the judge." This is consistent with Gonzalez de conver. coniung. n. 7 and others throughout, but more clearly with Ursaya Discep. eccl. tom. 3 dis. 21: "When one does not insist with the judge for the resolution of the marriage by the way of justice, but requests from the Prince only a dispensation by the way of grace, that rigor of proofs which is required by law in the first case should not be present, but the Prince can also be moved by extrajudicial demonstrations, and it suffices to not urge any suspicion of the consummation of the same marriage in order to incline the mind of the Holy Father for a dispensation in a valid marriage." See also the resolution of the Holy Congregation of the Council, Nicosien. Matrimonii, January 19, 1889, 2°. Because the irregularities mentioned above are either not substantial, or are of a kind in which dispensation is easily granted: thus, there are numerous resolutions in which dispensation has been granted, even though only physicians or doctors, and not midwives, had been called to examine the woman's body, with a matron present; thus, the testimony of witnesses, confirmed by oath, was admitted after some time.

[*Latin ed. p. 586*]

586 STRIGONIEN. It is given, as can be seen in Strigonium, that the marriage took place there. The marriage was celebrated on December 16, 1893, and in Florentina on January 28, 1877. Indeed, in the aforementioned Strigonium, a dispensation was granted, even though the deposition of seven witnesses from each side was desired, and only the sworn testimony of both spouses and medical expertise were present. Finally, it is important to note that, although the process was not instituted to prove the nullity of the marriage on the grounds of force and fear, there are serious indications on this matter from the depositions of several witnesses, and from the circumstances examined in the specific case; and perhaps the way of grace has been initiated, as it were, in a simpler case. Having stated these things to dispel any difficulty from the opposite side, and to provide a clearer understanding of the matter, I say that the lack of consummation of the marriage is established by two arguments, namely, the moral and the physical. I will begin with the moral argument: the plaintiff, Theresia, in her benevolent testimony, later confirmed under oath, declares: "The marriage that I contracted with Stephano was not consummated." And, recounting the matter of the separate sleeping arrangements, as mentioned in the specific case, she adds: "The husband did not come to me, and I did not go to him; even my mother heard when the husband said: 'Therefore, you do not come to me?' My mother is dead." "On the first day of our marriage, namely, the night from Tuesday to Wednesday, we spent the night awake and did

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not lie down; therefore, we were together for only one night." And further, "I told these (witnesses) that the husband did not touch me." Regarding the religiosity, veracity, and integrity of Theresia, witnesses were brought forward and duly examined, and they testified with one voice. Therefore, from what has been stated, the lack of consummation of the marriage is evident from the sworn statement of the plaintiff, Theresia, corroborated by the testimony of at least five witnesses, which, according to chapter 8 of the canons, has the same force as the testimony of seven witnesses; it is irrelevant that the witnesses were brought forward only out of credulity, since these are precisely those required by the Instruction of the Holy Congregation of 1840. Now, the sworn confession of one spouse, joined with the deposition of a relative...

[*Latin ed. p. 587*]

STRIGONIEN. 587. The good reputation of a place or its inhabitants is sufficient to prove the consummation of a marriage, when one of the parties is contumacious or denies it. Several texts of law teach this, such as chapter "Proposuisti nobis, De probationibus"; chapter 29, question 2, canon 1; chapter "De dispensatione impub."; and, notably, the Sacred Congregation of the Council, in one of its decrees concerning the case of Saint James of Chile, "Dispens. matrim.", May 12, 1894. What more need be said? The witnesses not only testify to the honesty and veracity of the actress Theresia, but they also agree in recounting the circumstances under which the marriage took place. I know that here two things can be opposed: 1° the cohabitation of the spouses, even if for a short time of two days, from which arises the presumption that the marriage was consummated; 2° the absence of the husband in the process. To these, I briefly respond that, although the presumption is a legal and rightful one, nevertheless, proofs are often admitted against it, as the Sacred Congregation of the Council teaches, among others, in its decree "Versavien. Dispensationis matrim.", February 24, 1894, in which, although the spouses had lived together for almost a whole month, and it was not proven that the woman was chaste, because she had been violated by another man, a dispensation was nevertheless granted (1). Then, in our case, besides the physical argument of chastity, which will be discussed later, there is the circumstance that Theresia was not held in any affection by the man to whom she was betrothed, but rather in hatred, because her affection was reserved for another young man, already betrothed to her, whom she loved from the heart; truly, it is not so easily presumed that a virtuous girl would readily offer her body to a man whom she detests. 2° Regarding the absence of Stephen, I respond that he was duly summoned by an edict affixed to the doors of the parish church of Bathens, to appear within two months, as is evident from the document in the records; and this form of summons is to be observed, when one of the spouses is hidden and his place of residence is unknown, as the Sacred

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Congregation of the Council testifies (1).

(1) See Vol. XXVII, 18.

[*Latin ed. p. 588*]

588 STRIGONIEN. Councils in Worms. Marriages of July 7, 1731, and in Milan, November 20, 1734; elsewhere, examples are not lacking in which, even when one of the parties was contumacious or unwilling, a dispensation was granted: and the reason is that, when it is established that there is an unconsummated marriage and a just cause for granting a dispensation, the opposition or contumacy of one of the spouses cannot impede the power of the Pontiff, and it is not just that the other spouse should be prejudiced by the resistance of the former. This concerns the moral argument; now, let us turn to the physical or anatomical argument, derived from the bodily examination of the actress Teresia, which was carried out by experts. I believe it is scarcely necessary to recall how much weight the authority of experts, especially those with judicial experience, should be given in this matter, since, as Cardinal De Luca states in *Disputationes de iudiciis*, book 3, chapter 33, number 20, « they are chosen rather to judge than to testify », and the Abbot, in chapter 2 on *Probationes*, states that « the judge will pronounce judgment according to their testimony », for this is a very common and well-known doctrine. Now, let us examine what and how much the testimony of the experts amounts to. Two physicians, distinguished by their honesty, religion, and science, having separately examined Teresia's body, and having sworn to uphold their integrity, and having found the hymen and other signs of virginity present in a woman, conclude that Teresia is a virgin, with her hymen intact. This integrity of the hymen, found by the physicians, would in itself be sufficient to assert the unconsummation of the marriage, because the jurisprudence of the Sacred Congregation of the Council holds that, unless it is established by the examination and testimony of physicians that otherwise, a marriage with an intact hymen is not considered consummated, as Gasparri states in *Tractatus de canonicis matris*, number 1065. But further, in the case of Teresia, all other "signs of virginity" are present. Therefore, if, in such matters, the judge must adhere to the testimony of experts, as stated above, the necessary conclusion follows: that Teresia's marriage remained unconsummated; nothing to the contrary being presented by the lack of use of warm bath water and the absence of an obstetrician with an honest matron, because these are almost always...

[*Latin ed. p. 589*]

STRIGONIEN. 589. Aula recessit, ut plures decisionibus Sacrae Congregationis probari posset. De causis dispensationis loquendo, Consultor dixit: "Prima causa est maxima aversio et odium quo Theresia afficitur erga Stephanum, siquidem ipsa primo coacta fuit ipsi nubere contra

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suam voluntatem: et reconciliatio Theresiae cum suo sponso est prorsus impossibilis ob odium implacabile, quo fertur erga ipsum, ut omnes testes deponunt ad questionem 14. Secunda causa est periculum incontinentiae. Theresia est in pleno vigore suae aetatis, trigesimum annum iam numerans, et testantibus medicis, est sana et robusta, proinde obnoxia aestuantis libidinis motibus. Iam vero has duas causas sufficere ad dispensationem tradit supra citatus Cosci, *De separatorum*, liber 1, n. 250, 259. Sed et adest in casu tertia, et eaque gravissima et specialis causa, nempe periculum apostasiae.

VOTUM CANONISTAE. Matrimonii inconsummatio, ait Consultor, triplici argumentorum genere probari solet: 1° testimonio iurato ipsorum coniugum, ex septimae manus testimonio corroborato; 2° praesumptionibus; 3° corporis mulieris inspectione. Atqui hoc triplex argumentorum genus hic concurrit ad probandam matrimonii inconsummationem. Et 1° attestatio iurata unius coniugis, seu mulieris, cum maritus contumax sit. Mulier, sub iuramento, iudici fassa est: paratam esse sese subiicere corporis inspectioni, cum virum non cognoverit. Quanti autem fieri debeat huiusmodi mulieris confessio probatur non solum ex adnexo iuramento, cap. ex litteris 32 *Iureiurando*, sed potissimum ex testimonio septimae manus. Mulieris attestatio confirmatur praeterea variis adminiculis et praesumptionibus. Et sane unica nocte in uno cubili, sed lectis separatis, neo-sponsi dormiere et quidem praesente matre, quae in alio lecto dormiebat. Tandem, quod omnem dubitationem de non consummatione matrimonii adimit, est iuratum duorum medicorum iudicium de mulieris integritate, post factam inspectionem."

[*Latin ed. p. 590*]

590 STRIGONIEN. The observations of the defender, acting in his office, are presented against the evidence collected by the assessor; however, the assessor strives to undermine these observations. OBSERVATIONS OF THE DEFENDER REGARDING THE MARRIAGE, EX OFFICIO. It is alleged that the marriage contracted in the year 1889, on the 5th of November, between Teresia, aged 24, and Stephano, aged 32, remained unconsummated. If one were to listen to Teresia, the spouses were never alone together. Indeed, they spent the wedding day and the following night amidst festivities; they did not share a bed. On the second night, Teresia, her mother, and Stephano slept in separate beds in the same room. On the third day, Stephano departed, left, and withdrew. It is not improper to state that Teresia and Stephano did not ascend to the bed on the first night after the wedding, but rather slept in separate beds. This, however, is testified to only by Teresia's father, based on his own knowledge. But I can affirm without fear of error: it does not immediately follow that the marriage was unconsummated. Furthermore, no one testifies that Teresia's mother kept vigil that night. What, then, prevented the spouses, either

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during that time interval when the mother was attending to her duties, or on the first night and during those two days, from meeting privately? Everything suggests that this occurred; for Stephano, a man accustomed to military life, was accustomed to physical exertion. Nor do I find convincing the testimony of Catharina Szumèrck and Maria Gajdos, who testify that they learned from Teresia that the marriage was unconsummated SOME DAYS AFTER THE WEDDING. This occurred during a suspicious time. Furthermore, Teresia ingenuously confesses: "I told these [Catharina Szumèrck and Maria Gajdos] that I had not touched my husband, because they believed THAT HE HAD, IN FACT, LED THEM TO BELIEVE THAT HE WOULD COMPLETE THE CARNAL UNION WITH ME." And Teresia does not lie in this. Indeed, Maria Gajdos recounts clearly: "I asked her this question about the consummation of the marriage because in the city, a rumor was circulating,..."

[*Latin ed. p. 591*]

5 9 1 STRIGONIEN. which states that Stephen, unless he wishes to know and then to carnally approach Teresia, " . However, you would vainly present the seventh commandment and the physical or anatomical argument. For the seventh commandment is imperfect and incomplete, as a most learned theological consultant wisely observes. Furthermore, the anatomical argument is to be considered of little weight, because, as the same consultant notes, the examination of a woman, having omitted the principal considerations necessary to prevent fraud and deception, is completed. With these observations in mind, the following question was to be considered: Whether counsel should be given to the Most Reverend regarding a dispensation from a valid but unconsummated marriage in a certain case. RESOLUTION. The Sacred Congregation, after deliberation on September 12, 1896, decided to respond: Considering the particular circumstances, and after a preliminary examination of the facts, affirmatively. MELE VITAN A EMPHYTEUSIS On September 12, 1896. By summary petition. In the diocese of Malta, the Benedictine nuns, called "of Saint Peter," located in the town — noteworthy — granted a certain emphyteusis of their property for 99 years to Charles Strichland, under the condition that the stipulated time would run from the date of obtaining permission from the Apostolic See. — They also added a clause to the agreement, namely that the emphyteusis contract could be dissolved after ten years from the date of taking possession, if experience should show, according to canon 3125 (125 pounds sterling). COMPENDIUM OF THE FACTS.

[*Latin ed. p. 592*]

592 The situation in Fondi regarding the leasehold was unfavorable. For at the time the lease was established, the conditions of the agricultural sit-

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uation were already deteriorating, and there was no hope that they would soon improve; indeed, there was fear that they would become worse. Therefore, in order to avoid easily arising disputes, a period of 10 years was determined, after which, having gained experience, the leaseholders would have the opportunity for repentance. On January 17, 1895, the nuns presented a petition requesting an apostolic dispensation regarding this lease. However, the leaseholder opposed this, arguing that the agricultural situation had worsened so rapidly that the canon established in 1894 was now excessively burdensome and quite unfair. The Ordinary, after being consulted for information and opinion, reported that, according to the judgment of experts, the leasehold agreement was beneficial to the nuns, because, given these circumstances, the canon of 3125 florins per year, as stated in the documents, could now be considered sufficient, even if it were reduced to 2500 florins. Regarding this matter, the nuns pray that this lease agreement be considered valid by the Apostolic See, and they do not understand how the agreed-upon price could be reduced. The leaseholder, on the other hand, prays that no apostolic approval be granted to this agreement, which, in the face of the agricultural crisis, cries out for justice; and he requests that the price of the canon be reduced to 2100 florins.

A Synopsis of the Arguments:

The arguments of the leaseholder appear to favor this position. Indeed, this is not a true leasehold in the proper sense, but rather a leasehold in a non-proper sense. For the canon does not only pertain to the recognition of the lord's right and property in the land, as required by a true leasehold; but the essence of the canon is the amount, which is almost equivalent to the ordinary revenues of the land, or rather, it is considered a lease or rental agreement. However, because the other conditions of the agreement do not truly correspond to the nature of a lease or rental agreement, this is a contract of a unique or unnamed type, whose intention is "I give that you may give, I give that you may do."

[*Latin ed. p. 593*]

MELEVITANA 593 days, I make it so that you give, "and so forth": Natural laws, concerning present verbs. — But in an unnamed contract, there is room for repentance; which is explained thus by Reiffenstuel, title On Sins, no. 192: "...in named contracts, it is not permitted to repent; that is, to withdraw from the contract, without the consent of the other party; as is clear from Justinian, Institutes, 5, C. De act. et obi. On the contrary, in unnamed contracts, as far as civil law is concerned, it is not only permitted for each party, with full capacity, to repent... but also he who has fulfilled the contract on his part before the other has fulfilled it, can still repent, and if he has paid anything for this reason, he can recover the money given; provided that the other is kept unharmed, etc." JURAMENTALS. But, on the contrary, the claim of the emphyteusis does not seem to be to be considered,

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because whatever may be the subtleties of civil law, according to canon law, argument, chapter 1 De pactis, pacts must be religiously observed. Therefore, Reiffenstuel, I, chapter, no. 114, citing several authorities, says: "For, considering canon law in unnamed contracts, it is not permitted to repent, if the other party is prepared to keep faith and fulfill the contract, and is not in default in fulfilling it..." Therefore, whether the present contract is named or unnamed, there does not seem to be room for repentance, or for the claim of the emphyteusis. — Even more, this intention should be rejected if two things are considered. First, that in the contract entered into, a condition was expressly stated regarding the altered revenue of the *fundi*, and therefore, the right of the emphyteusis to withdraw from the obligation of the contract after a trial period of 10 years was established. Second, the matter concerns a monastery of nuns, that is, a moral person in law equated with minors, who enjoy the greatest favor; argument, chapter 1 and following, in title De r est. in integrum. Therefore, their acts must be upheld, and it must not be permitted for them to be rescinded when others would derive benefit from them, and they themselves would suffer damage, even though such acts, made by adults, are usually not upheld, according to the well-known saying of Justinian. Acts. Vol. XXIX. page CCCXLVI. 38.

[*Latin ed. p. 594*]

594. MELE VIT A N A. Having considered these matters, the question was raised as to how the prayers should be addressed. RESOLUTION. The Sacred Congregation, having been informed on January 23, 1897, decided to respond: There is no reason to diminish the canon, and the apostolic indult should be granted to the nuns for the confirmation of the contract of November 4, 1894.

NEAPOLITANA. NULLITY OF MARRIAGE. On December 12, 1896. Session 24, Chapters 1 and 5, Concerning the reform of marriages. Mathilde, born to unknown parents, was received in Naples at the hospice of the Expositions. The Most Blessed Virgin was greeted by an angel, and when she reached her ninth year, she was adopted as a daughter by the spouses Alphonse and Rose, citizens of Torre Annunziata. But after three years, due to the death of Rose, she had to return to the aforementioned hospice, where she remained for only a short time, and from there she was received by the spouses Paduano of the place called Boscotrecase. However, shortly after, she was calumniated by the family Paduano, but her innocence was publicly proven by an examination of physicians, and she returned to the hospice, leaving the house of the slanderers. While Mathilde was staying with the family Paduano, she met a young man named Angel, 24 years of age, who himself had been illegitimately procreated and exposed in the same hospice, and who took an interest in her and proposed marriage. Therefore, Angel frequently visited her at the hospice and spoke to the nuns, who were in charge of the education of

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the girls, about the possibility of marrying her. In order that the marriage might be quickly arranged, it appears that the nuns consulted with Angel, and Mathilde was again received into the house of Alphonse Manzo. The girl returned to the family of Alphonse, and as soon as she reached the age of 14, the marriage was arranged.

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 595*]

NEAPLES, and celebrated on March 12, 1877, before the parish priest of the church of Saint Anne in the town of Boscotrecase, where Angelus also resided. Such a marriage, which is alleged to have been arranged without the consent of Mathildis, and indeed, with her resistance, proved to be a most unhappy union. For scarcely two months had the spouses spent in conjugal life when, as they themselves recount, discord arose between them, which immediately gave rise to continuous quarrels, disputes, and reproaches. The wife repeatedly deserted her husband, fleeing with lovers, and finally, after a year and a half of marriage, the conjugal life was definitively dissolved, both parties engaging in adultery. Afterwards, with the help of the merciful God, Mathildis, lamenting her sins, sought refuge in the pious house under the title of the Good Shepherd in Naples, where she still resides. Having learned, over time, about the nullity of her marriage due to lack of consent, she petitioned the Neapolitan ecclesiastical court, requesting that the marriage she had entered into with Angelus be declared null and void due to the absence of consent, which was obtained through coercion and fear caused by unjust threats. The Neapolitan ecclesiastical court, having received the petition of the woman, initiated a canonical process, observing all legal procedures, and on January 4, 1893, issued the following judgment: "The marriage entered into on March 12, 1877, between Angelus and Mathildis is declared invalid, void, and null, due to the lack of consent of Mathildis, since it is certain that she entered into the marriage through coercion and grave fear, unjustly inflicted in order to extort her consent to the marriage."

A SYNOPTIC DISCUSSION ON THE WILL.

The will, as is known, consists of two elements: the cognitive element and the inclination of the will, so that whatever diminishes or removes one or the other of these elements, diminishes or removes the will itself. Indeed, although some witnesses seem to deny...

[*Latin ed. p. 596*]

596 In Naples, Mathilde possessed understanding and knowledge, but the others readily admitted this without hesitation. However, concerning

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those witnesses who seem to deny such knowledge, it must be noted that there is a distinction: one is that which, "by the use of reason, is so capable that it understands the force and nature of marriage," as Benedict XIV states in the Constitution *Magnae nobis* on June 29, 1748, which is necessary and sufficient for the validity of marriage; the other is that which possesses such counsel and prudence that it can not only validly contract marriage, but also with the hope of a happy outcome; but these witnesses seem to deny the latter, considering the lightness of her character, and not the former. Furthermore, when Mathilde contracted the marriage, she had already completed her twelfth year of age. However, in canon law, it is established in Title IV, Decree I, Chapter 11, concerning dispensations for minors, that marriage is to be considered valid when both parties have reached the age of puberty, or the age of fourteen in the case of a man and twelve in the case of a woman, unless malice has hastened the age. In this case, however, it is clear that this was not the case, as evidenced by the judgment of the Archdiocesan Court of Naples, in which, in order to determine the invalidity of the marriage, no mention was made of a defect in knowledge or a physical disability, which are two things that constitute malice. Therefore, it is unnecessary to insist further on proving that there was no lack of voluntary consent on the part of Mathilde due to a defect in knowledge. But what about the inclination of the will? Furthermore, from the entire process, it appears to have been sufficiently proven that the girl gave her consent to the marriage under the influence of some fear. For, while not every fear invalidates marriage, but only a grave fear, unjustly instilled and directed to extort consent (as commonly held by jurists and moralists), it must now be investigated whether the fear under which Mathilde gave her consent truly possessed all of these properties. However, it seems to me that it cannot be certainly proven from the acts and evidence that the fear was grave, unjust, and directed to extort the marriage.

[*Latin ed. p. 597*]

NEAPOLITANA 397 Furthermore, concerning the gravity of the fear, the evils under whose influence the marriage is alleged to have been contracted are described in the opinion of the archiepiscopal court of Naples: "Alphonsus threatened to expel her from his house, and consequently to abandon her completely, if the girl refused to marry him. This fear, under such a threat, is grave, as the doctors say, and, due to the circumstances, is more or less so: in this case, it is considered to be very grave. We are dealing with a girl who had not yet reached her third decade of life, endowed with a quick mind, filled with cheerfulness and joy, whose imagination must indeed have been very lively. All kinds of and every kind of abandonment accompanied this expulsion. Where could she find refuge? Her parents concealed her, and no mortal being cared for her affairs, for she was without help. Alphonsus also threatened to take her again to Naples, to the

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pious house, *Ave gratia plena*; but, considering these things before her eyes, this was not a lesser evil. For Mathildis would be returning to that place for the third time: which would indeed bring shame to her name, and cause her dishonor, and she abhorred the solitude of that place." Thus, there are two evils that are presented as the cause of fear in the mind of Mathildis, namely, the fear inspired by threats and, in particular, the threat of expulsion from the house of Stephani, and the return to the pious house of the Annunciation. Indeed, it does not seem that Mathildis considered the latter to be so important as to be assigned as the cause of a grave fear: for, in Mathildis's opinion, the return to the pious house of the Annunciation was not so important as to be assigned as the cause of a grave fear; for she preferred this return to marriage itself: which should not be surprising, since her stay in that same house was not described by Mathildis in dark colors. But neither does the fear inspired by threats, and especially the threat of expulsion from the house of the family of Alphonsus, seem to be able to be considered as the cause of a grave fear in Mathildis. Even if Mathildis were not a daughter, nor...

[*Latin ed. p. 598*]

598 In Naples, the adoption of Stephen, even though the girl was under his care, from whom she had been received into the family, can be admitted with the best of intentions. In the girl, there is some reverential fear, which, according to Sánchez De Matr. lib. IV disp. VI n. 25, "is given to him who is subject to another by some right of subjection." However, the Doctors agree that this fear does not invalidate the marriage, unless it is accompanied by threats, as S. Alph. De matr. n. 1056 states, or at least "if there is a serious and prolonged indignation of that person, from whose person the life and fortune of the individual depend, considering all the circumstances," as Ballerini, Opus theol. mor. De matr. n. 1126 states. But, leaving aside other threats, such as death, which, as is evident in our case, are to be considered as empty words and are only uttered verbally, Sánchez /. c. n. 23, this does not seem to be of such importance that it can be considered as a cause of serious fear; for here we are not dealing with a daughter in relation to her father, but rather with a servant in relation to her master; therefore, a) Mathilde did not have that love and reverence that a daughter has for her father; b) Mathilde had no right to the inheritance and goods of Stephen; c) Stephen is presented as a greedy man, from whom, therefore, Mathilde could expect little or nothing. Finally, and most importantly, the Doctors teach that fear is not to be considered serious if the person fearing cannot easily avoid the evils that are feared, as Sánchez De matr. lib. II, disp. 1, n. 23 states: "if he could avoid the evils that are feared by some other means, such as by asking for help from someone, or by consulting a superior, then it would not be a fear that falls upon a steadfast man." However, Mathilde always had the means to avoid the threats of Stephen, by appealing to the

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Superiors of the pious House of Annunciata and by returning to that same house, so that no comparison can be made between this case and the case of a girl to whom her father threatens to throw her out of the paternal home. Finally, the Consultor states that it is not proven that the fear was unjust and directly aimed at extorting consent. And, in the first place, the Doctors agree that fear is not unjust if someone is compelled, even by a judge, through censures, to enter into marriage.

[*Latin ed. p. 599*]

In Naples, 599, concerning marriage, to which one is bound by the force of betrothal, see Ballerini, *Matrimonia*, no. 1128. However, in this case, it seems probable that betrothal occurred between Angelo and Mathilde, before the woman was received again into the Manzo family; and indeed, it is quite certain that this was done to facilitate the marriage undertaken by Stephen; therefore, Manzo cannot, at least with certainty, be condemned for injustice if he urges the celebration of this marriage. But how can it be said that fear was the direct cause, if Manzo, as the account of events shows, was anxious that something serious might happen to Mathilde because of her frivolous character, and therefore offered her the choice of either marrying Angelo, which he himself believed would be beneficial to the woman, or of returning to the Pia domus of the Annunciata, in order to free herself from the care of the very delicate girl, which she had undertaken out of charity, and to leave Mathilde free to marry whomever she pleased? From what has been discussed so far, it seems to me that it has not been certainly proven from the acts and testimonies that fear was grave, unjust, and directed to extorting consent. But according to the *Inst. S. Inquis.* of June 20, 1883 (art. 3, no. 39), "marriage... must always be considered valid, unless evident reasons demonstrate its nullity." Therefore, to the question: "Should the sentence of the Neapolitan Archdiocesan Tribunal be confirmed in this case?", it seems to me that the answer should be: "It does not appear that the marriage is null." OPINION OF THE CANONIST. Alexander III taught that the confessions of spouses are not sufficient to prove anything, because they may conspire against the indissoluble bond; however, if something slips from their lips, which is contrary to their will and favors the marriage contract, that must certainly be noted and investigated, so that the truth may be revealed. The spouses could not agree with each other in explaining their mutual confessions, because the bride was and still is in the cloister, and there is no one who has testified that Mathilde was in the town.

[*Latin ed. p. 600*]

600 In NEAPOLITANA, Boscitriumdomorum affirmavit non fuisse una hora a die qua a domo viri sui discessit, nec Angelum Neapolim visitasse. Confessio mulieris non est circumdata circumstantiis aequivocis; patefacit

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rationes, quibus nitebatur sua repugnantia ad nubendum Angelo; scilicet quod ipse erat pauper agricola; lucrum laborum suorum erat libella una singulis diebus quando colebat agrum alicuius; erat deformis et non alliciè-bat, moribus rusticanis conversabatur, et iracundus. Aperit cor suum sicut puella nondum malitiae fascinatione irretita. Identicus suus sermo, nec se excusat, nec sponsum accusat. Non viro suo imputât causam nullitatis matrimonii sed sibi. Narrat enim praeter alios iuvenes, qui manum eius quaerebant, amasse ipsam, iuvenem cognomento Izzo civilibus moribus, et urbana conversatione et pulchritudine amabilem. Cum ipsa esset venusta et alacri ingenio donata a Deo, et in hospitio instructa eleganterque educata, naturaliter agricolam rudemque respuebat. Quando loquitur de consummatione matrimonii confitetur cogitasse sicut puellae cogitant, et ipsa tunc erat annorum tredecim. De impedimentis et conditionibus matrimonii nulla ei aderat cognitio, ut ipsa affirmat; et huiusmodi sunt puellae eiusdem aetatis. Sed sinceritas confessionis eius patefit magis magisque ex eo quod ipsa noluit adducere testes, ex sua parte, ab ea electos, sed proprio parocho hoc omnino commisit. Erat ergo de sua confessione ita secura ut minime timeret ne per testes fuerit arguta de mendacio. Qui amat et loquitur veritatem non odit lucem. Sponsus pariter in sua confessione sincerus apparet. Revera ipse contradicit puellae cum loquitur de prima sua allocutione cum ea. Ait enim, quod interrogata, an acciperet eum in maritum, respondit iuvenes esse volubiles; huiusmodi conceptus non invenitur in confessione mulieris, et fortasse ita locuta sit, sed alia quae Mathildes narrat se dixisse, bene possunt cum huiusmodi coniungi conceptu, idque non destruit argumentum supplicantis eiusque sinceritatem.

[*Latin ed. p. 601*]

NEAPOLITANA 601. He was a simple man, and in his simplicity, he recounts the events that preceded the marriage. Mathildis, although a young woman, was exceedingly astute, and, desiring to return to Boscumtriumdomorum, where her beloved was, she felt affection and a longing to return to her adoptive parents. Mathildis stated that in the house of Stephani, she opposed her adoptive parents and refused to enter into marriage with Angelus; and he, as if confessing the same thing, recounted other matters that were detrimental to him, while he desired that Mathildis return after so many years to her home. We shall soon see, evidently, that the sincerity of the betrothed's confessions, as to the substance of the matter, was confirmed by testimonies. The angelic doctor, Saint Thomas, says that, just as we are moved to love those things that delight us, insofar as they are apprehended by us through the reason of the good; so too are we moved to hatred against those things that sadden us, insofar as they are apprehended by us through the reason of evil. The young woman could not love Angelus in such a way that, in the highest degree of affection, her mind would find rest. For what was found in Angelus that was pleasing?

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Not beauty, not wealth, not intelligence, not refinement, but the opposite. How could Mathildis, who was beautiful, love Angelus? Like attracts like. These defects in Angelus were distressing to Mathildis's mind, insofar as they were conceived under the reason of evil. And indeed, if perfections are good, and defects are evil, because evil is a negation and a privation of good, from which privation arises hatred. Furthermore, as she herself confessed, Mathildis was conversing with a young man named Izzo, commonly called Perrelli, whom she pursued with great affection; how could she simultaneously love Angelus? The young man Izzo was handsome, refined, and of good social standing, with whom she maintained a familiar and continuous relationship; she could not, at the same time, love both a handsome and an unattractive man, nor a refined and an unrefined one. Truly, marriage consists in the mutual consent of the betrothed, and it relies on mutual love and the extreme tendency of love that requires union. If love is lacking, it cannot be.

[*Latin ed. p. 602*]

602 In Naples, a sincere judgment, and therefore a marriage, cannot be said to have taken place. The witnesses unanimously testify that Angelus not only did not love Mathildis, but that he even hated her. He who loves does not mock, does not reproach his beloved, nor does he desire his beloved's death. But Mathildis confessed that she desired the death of Angelus, and the witnesses testify that she treated Angelus with derision, constantly rebuking him: how can it be thought that she loved Angelus, her supposed spouse? From these statements, it is clearly apparent that Mathildis never adhered to the will of her adoptive parents, who desired that she be joined in marriage to Angelus. A habitual aversion existed in Mathildis with regard to this marriage, and therefore a habitual dissent. How can consent be inferred from a habitual dissent? How can an affirmation be deduced from continuous negations? This is an illogical method, and an unnatural inference; but marriage consists of consent, as is held by repeated definitions of the Pontiffs and by the councils. Therefore, the marriage of Angelus with Mathildis, if it had a preceding habitual dissent, certainly could not have consisted of consent. All the witnesses agree that Mathildis hated Angelus, and that Mathildis did not want to enter into marriage with Angelus. With such circumstances, the truth of consent could not be deduced from the part of Mathildis. Consent must not be that of one alone, but must be mutual. It was present on the part of Angelus, but it was by no means sufficient. When the cause of the sacrament is lacking, the sacrament itself is lacking. The cause of the sacrament of marriage is mutual consent, not that of one alone. And on this matter, the doctrine of all the canonists, compiled by Father Sánchez, is relevant: "It can be understood in two ways that consent is the cause of marriage. Firstly, because it is a sacrament, and thus it is said to be a

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cause insofar as consent is the cause of the external contract of marriage, in which the reason of the sacrament consists; and according to this, it is not only an efficient external cause, but also a formal and intrinsic cause, because the words of the contract, insofar as they involve mutual con-"

[*Latin ed. p. 603*]

NEAPLES. Sixty-three reasons and those express them are the matter and form of this sacrament. And it is confirmed because the intention of the minister and the recipient of the sacrament is concerning its essence; and those who contract the marriage are themselves the ministers and recipients of this sacrament. Therefore, their consent and intention are concerning the essence of this sacrament. Secondly, it can be understood that the consent itself is the cause of marriage, insofar as marriage is a certain marital union, and in this way, the consent, insofar as it is expressed through words, is the efficient and extrinsic cause of marriage; and although it is not of its essence, it is nevertheless so necessary that marriage can never exist without it. Sánchez. Consent is the consequence and application of love. If the spouses did not pursue mutual love, or if one party did not at all love the other, how can it be said that there was a true consent? The witnesses brought forth testified that Mathilde never said that she loved Angelus, nor that she wished to enter into marriage with him, but that she had a purpose proposed to her by her adoptive parents. To confirm the truth, which was unanimously presented by the witnesses, both from the side of the actress and of Angelus, it must be considered that they declared before the Vicarius foraneus, and also before the public magistrate, that the actress was illiterate, and that she used the sign of the cross for her subscription, while Mathilde was well instructed in human matters up to the fourth elementary class. A sufficient reason for such a substitution, unaware to the actress, was the deceit which proceeded from her dissent. Full liberty is required in marriage in order that it may be considered valid, which should not be weakened by limits and constraints, but should be full; it should be a true liberty of choice, not affected by fear, nor insecure by dangers. Especially if the bride is still in the stage of adolescence. Mathilde's continuous weeping not only manifested her repugnance to entering into marriage with a deformed and rustic man, while another young man, worthy of her, loved her and desired to take her as his bride, but also expressed...

[*Latin ed. p. 604*]

604 In Naples, she suffered a complete loss of freedom, and the grave fear that tormented her heart. No day passed without persecution, and she was afflicted by the prospect of entering into marriage with Angelo. Could such circumstances produce a true consent? It is established by law that the betrothed must enjoy complete freedom and security. In the law concerning betrothal, chapter 14, we read: "When there is no place for

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consent, where fear and coercion intervene, it is necessary that, wherever the consent of each is required, the matter of coercion be repelled. For marriage is contracted solely by consent, and when this is questioned, he must enjoy complete security, whose mind must be investigated, lest he say that he consents when he hates it." Saint Thomas, in question 47, article 2, explains these words, writing: "To fall into fear in someone is to be compelled by fear. Someone is compelled by fear when he does something that he would otherwise not do, in order to avoid that which he fears." Mathilde, a girl of fourteen years, did not have a full understanding of marriage. Almost all witnesses testify to this. Being naturally distracted, frivolous, and changeable, she often said, in order to avoid evils, namely, the vexations of her adoptive parents and the prospect of entering the Annunziata convent, "I will say that I want to, and I will leave Angelo's house," which is well known in the village of Boscitriumdomorum. With these words, she demonstrated that she did not have a true understanding of marriage. True consent was truly coerced by fear falling upon a steadfast man. Fear, as a passion of the heart, seems to be moderated in the same way that the judgments of the mind are developed. What is a slight evil for a grown man and a strong-minded person, is a grave evil for an adolescent, a most serious evil for a child who is afflicted by trembling at any phantasm. What does not excite fear in a grown man and experienced person, produces a trembling agitation in a woman. In a girl of fourteen years, the words of her adoptive parents, threatening expulsion from the home, constituted a...

[*Latin ed. p. 605*]

NEAPOLITANA 605, at the hospice, great burdens weighed heavily on the girl's heart. For she was uncertain, as to where she could go? At the hospice, she faced the derision of her companions, rash judgments, and the vexations of the nuns, who were easily inclined to suspect her of being recalcitrant and dishonest. All of these things were grievous evils for the girl. But furthermore, the witnesses testify that Mathilde was probably forced by beatings. Almost all of the Most Eminent Fathers testify that Mathilde, a girl of fourteen years, did not understand the effect of marriage, which requires consent. If she did consummate it, the marital intention was not present in her, but rather concupiscence prevailed, and as she herself confessed out of curiosity, she did it to experience what other girls at the hospice had told her. The man, Angelus, confessed that he never moved Mathilde during the act; the girl, forced by beatings, troubled by the fear of the future, orphaned of her parents, relatives, and affine kin, not knowing where to go, was under the greatest indignation concerning the couple who adopted her, not legally, but by word. And although she agreed to return, according to the laws of that time, which still endure, she was obliged to leave the hospice at the age of 21. Is it perhaps not a very grave evil to have inflicted this injustice upon her? I will not say that such fear would not fall

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upon a steadfast man. While the adoptive father stood in the church, when the marriage was celebrated, the girl was certain that she would suffer not only beatings from that rude and cruel man, but also expulsion, and other very grave evils with respect to her sex and age. Therefore, she gave a false consent, and legally, there was no marriage. OBSERVATIONS OF THE DEFENDER OF MARRIAGE EX OFFICIO. In the case of the marriage between Mathilde and Angelus, both of whom were born to unknown parents, which began on March 12, 1877, I will not speak at length, after what the most excellent theological consultant has wisely and learnedly discussed. However, I will present one or two things with the clearest eyes, with which, after careful consideration, everyone can easily see that the fear, as well as the fables, are true, and that Mathilde, indeed,

[*Latin ed. p. 606*]

606 In Naples, compelled by a vehement impulse of will, a marriage was hastily arranged. First, the testimony of Angelus must be heard, who in the judicial examination recounts: when Mathildis resided with the Paduan couple, I proposed to her that she enter into marriage with me. At that time, she was grieving, because the aforementioned Paduan couple had decided to send Mathildis to the religious community of the Most Holy Annunciation. The young woman so gladly accepted the proposal that she almost doubted its truth. After two months had passed, the young woman was indeed returned to the religious community, who granted her permission for seven months to speak before them about entering into marriage as soon as possible. Mathildis, however, recounts the matter differently: but the established facts refute her. For, besides the fact that Angelus, together with her mother, caused distress to Mathildis in the convent, the pious superior of the convent did not hesitate to allow Angelus to approach the unwilling Mathildis, several times each month, and otherwise: nor did the religious community or other pious individuals, aware of Angelus's ardent love for Mathildis, urge him to take her from the convent sooner, so that he might quickly take her as his wife. Here, I note in passing that it is to be wondered at that the theological advisor rightly marvels that neither the nuns nor the administrators of other pious institutions were brought before the most reverend court of Naples for examination. But, you say, is it not unlikely that a young woman endowed with beauty and educated in the ways of the world would be pursued by a rustic and unattractive man? The answer lies in the middle: nor do I believe that Angelus captivated Mathildis. But she was such a Mathildis that, unless she could find someone to make use of her who had captivated her heart, she was eager to marry, and to marry quickly, as she herself confesses and as witnesses testify. The young woman herself recounts: that at the age of 12 years, she was brought to a pious place of education; and then, entrusted to the Paduan couple, she also had to endure the visitations of doctors, due to the calumnies of older men, and

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her integrity was proven by them. I do not implicate the doctors.

[*Latin ed. p. 607*]

In Naples, it was known that Mathildis, a virgin, had been given in marriage. However, the husbands, being men of little understanding, had allowed Mathildis' body to be examined, lest the suspicion of her familiarity with men should make the girls anxious, even though the girl, albeit young, was chaste. Therefore, this girl was most likely betrothed to the Angel, even though she did not love him, nor, above all, did she love any other man. For girls who are so disposed of mind often choose him among all men who is most ready to celebrate the marriage. However, you would wrongly accuse the marriage of being forced, when the bride, Mathildis, was brought from the house of the Angel, to the doors of the bridegroom, with nocturnal music. Indeed, that nocturnal song should be attributed to not a few young men, to whom the girl had shown signs of love, falsely fostering hope of marriage. Truly, those young men would not have sung that nocturnal song to the husbands, but rather would have shown mercy to Mathildis in her misfortune, if they had discovered that she had been forced into marriage. But those lovers, being well-versed in the matter, pursued the bridegroom, because Mathildis did not approve of their actions. Nor can anything better be inferred against the marriage from the sudden adulteries committed by Mathildis, nor from her subsequent flight. For all these things are far from the girl who, as we have seen, had aroused suspicions from a very young age. And in truth, when she left the Angel, Mathildis clung to the Savior, and certainly clung to Him more willingly; but nevertheless, she did not remain with Him for long. I conclude: if the actress desires to act with a good conscience, she should return to her husband, remembering the divine precept: "What therefore God hath joined together, let not man put asunder." But if, while living with the Angel, who is prepared to receive her, and protected by heavenly aid, she does not cease to commit adultery, much less will she remain faithful to any other man, without divine help. With these things in mind, the presumption must be dispelled.

[*Latin ed. p. 608*]

608 Naples. Whether the judgment of the Archdiocesan Tribunal of Naples should be confirmed or overturned in this case. RESOLUTION. The Sacred Congregation of the Holy Office, after deliberation on December 12, 1896, decided to respond: "From the presented documents, it does not appear that the marriage is null."

ROME. Residence. On January 23, 1897, Session 21, Chapter 3, Regarding Dispensations. In the collegiate church dedicated to St. Jerome of Illyria, erected in the city by Sixtus V, Nicholas Givanovich of Dalmatia obtained a canonical benefice in the year 1886, whom, later, Leo XIII deigned to enroll among his chamberlains in recognition of his merits.

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This man, unfortunately, on March 9, 1892, while walking along a public road not far from his church, encountered a certain beggar who impudently demanded alms from him. Having refused, the beggar suddenly attacked him, striking the priest with a double-edged knife, but, fortunately, only inflicting a single wound on his neck, which was not serious. In truth, after a few days, the canon recovered, and immediately resumed the exercise of his duties; but he did not easily overcome the mental distress, which rather seemed to increase from day to day, so that he decided to leave Rome in the month of May. Therefore, he humbly petitioned for a dispensation from the regulations regarding his residence, and on May 25, 1892, the Sacred Congregation responded: "For the granting of a dispensation for six months, from the date of departure from his residence, to serve as a substitute for the altar service; at the discretion and conscience of the Bishop."

By another rescript dated March 4, 1893, the indulgence was extended by the Sacred Congregation, which decreed: "After the expiration of the aforementioned indulgence, for the granting of an extension for two years, in the same form as the preceding."

SUMMARY OF THE FACTS.

[*Latin ed. p. 609*]

ROME, 609. Upon the expiration of this term, the advocate again petitioned for an extension of the dispensation due to the persistent infirmity; and on April 22, 1895, the Sacred Congregation decided to respond: "Considering the particular circumstances, a grace is granted until the end of the next month of May, according to the established form, without any hope of further extension." However, even this time elapsed without the unfortunate canon appearing to have recovered from his moral affliction; indeed, he has thus far refused to return to Rome, alleging, based on the testimony of physicians, that he cannot bear to see the place of his misfortune without experiencing a violent disturbance of mind and nerves. However, such reasons do not greatly move the capitular brethren, who had long since become somewhat skeptical of the severity of Canon Nicholas's illness, and after the period of legitimate absence had expired, they denied all the benefits of the canonry to the absent canon; and now they maintain that no further dispensation from residence should be granted, since the canon has the means to renounce, if he is afflicted not by a bodily ailment, but by a sickness of the mind, which prevents him from fulfilling his duties. The matter is even more serious, because the capitulars believe that the absent canon not only loses the daily distributions, but all the benefits of the canonry, as the Constitution of Sixtus V decreed: "...the fruits, revenues, profits, rights, emoluments, and all other things which are to be received and distributed daily among those present and engaged in divine services, according to the

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prudent arrangement made above, etc." Therefore, the canon's advocate, in a legal dispute, on the appointed day, posed the following questions, which were received and considered, although the chapter, duly summoned, did not appear in any way. — The questions were: — 1. Does it appear that Canon Nicholas Givanovich's infirmity persists to such an extent as to constitute a legitimate cause for absence? — And in the affirmative: — 2. Is the Chapter obligated to pay Canon Givanovich all the fruits of the canonry in this case? — And in the negative, concerning the first question: — 3. Is the Chapter obligated to pay the canon?

[*Latin ed. p. 610*]

610 In ROMA, the case of Mr. Givanovich concerning the fruits of his canonry, dating from June 1, 1895, is being considered, with the daily distributions being withheld as a matter of right. The argument of the Optical Advocate, Mr. G. — The canon's advocate particularly points out: — Firstly, it is established by law, and there are legitimate reasons by which someone bound to choral service may be excused from residence, and among these, bodily infirmity is to be included. Canon Law, Common 13, Dist. Cap. Significatum 11, concerning Prebends. Indeed, if, according to civil law, infirmity always excuses from office and duty, it will certainly excuse more so according to canon law, which proceeds from the Church, which, always mindful of the most tender maternal care, has recognized that no one should be compelled to perform their duties with great discomfort or danger, and has permitted those whose health prevents them from doing so to be absent from ecclesiastical service. Furthermore, the advocate insists, not only is the case concerning bodily infirmity, but also concerning the inability to return to residence and choral service. Regarding the severity of the infirmity, the canon, Mr. Givanovich, states that it has undoubtedly existed up to the year 1895, as evidenced by a certificate from the most esteemed Dr. F. Herardt, Envoy and Minister Plenipotentiary of Austria-Hungary. Furthermore, the advocate strives to prove that the client's infirmity still persists and has worsened, presenting medical certificates as evidence. The opposing counsel, however, argues that these certificates cannot be considered valid, lacking any judicial solemnity; nevertheless, he notes that the weight of the certificates must be considered differently, as stated by De Luca, Dis. 33, n. 3, concerning judgments: « Or, indeed, according to the quality of the persons who provide the certificates, because we are dealing with Princes or Nobles, and other prominent persons of the ecclesiastical or secular order, for whom it would be inappropriate or improper to subject themselves to a formal judicial examination, and therefore their custom is to attest the truth by letter, or by private... DEFENSE OF THE CANON.

[*Latin ed. p. 611*]

ROMANA 611 documents signed by them. Or, let us consider the testi-

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monies which possess sufficient grounds for support, from whose conjunction this imperfect proof will become perfect." Finally, it is stated that every exception is surpassed by the testimony of the Bishop of Ragusa, dated February 23, 1895, which is strengthened by the testimony of the Ordinary, dated May 27, 1895. The advocate notes that the illness cannot be denied because it is not outwardly apparent. Indeed, the Sacred Congregation often recognizes infirmity in similar cases, burdening the conscience of the infirm; as can be gathered from Troia, November 15, 1710; and in Tranen, September 12, 1750, in which, regarding the doubt "Whether this person is lacking a legitimate impediment to being absent from the choir, so that daily distributions are due in this case," the response was "Affirmatively, the conscience of the advocate being burdened." Then, proceeding to the second declaration of the doubt, the advocate argues that the canons of Saint Jerome are obligated to pay to the infirm canon all the fruits of the canonry, which they have held and are holding from June 1, 1895. For, the advocate insists, since the cause of the absence is legitimately proven, it clearly follows that the absent person is entitled to all the fruits of the benefice which he possesses. Indeed, Pope Gregory IX, in chapter *Quum percurs.* de der. aeg., wrote to the Bishop of Urbisvetere: "We urge your fraternity, that the bearer of these presents, because of his illness, should not be prevented from receiving what is customarily received from your Church; for if others were deterred by his example, perhaps no one could be found to serve in the Church, but according to his order, whatever he could minister when healthy, your fraternity should provide to the sick man, because of the very scarcity that could befall the Church." From this, the Glossa notes that the infirm person is to be understood as serving, and he should receive everything as if he were healthy; for he is sufficiently afflicted by his infirmity itself. Fagnanus, in his commentary on the decree, chapter n. 11, states that a canon absent due to infirmity is not only due the fruits, but also the daily distributions, provided that the infirmity is the principal cause of not serving. This has been confirmed by the Sacred Congregation in Reatina, March 5.

[*Latin ed. p. 612*]

612 In ROMANA, anno 1667, deceretur ut edictum esset, quod sequitur: "Canonicus, durante sua infirmitate, quamquam non participet in choro, debet omnia fructa sua canonica accipere, sine ullo modo distributione, dummodo ante infirmitatem solitus fuerit Ecclesiae suae servire."

Ceterum, prosequitur patronus, ad effectum absentiæ et lucrandi distributiones in absentia, non requiritum illud genus infirmitatis, quod aegrotum lecto aut domi necessario detineat, sed sufficit quod ex morbo, etiam levis, incremento timatur servitium choralis. Ita Reiffenstuel, *lib. 3, dec. de Cler. non resid.*, §7, n. 193; Schmalzgrueber, *tom. 1, tit. 4*, § 4, n. 86; Pignatel, *Consult.*, 115, n. 67, *tom. 9*.

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Praeterea, admonitorat orator, non debet canonicum impedire defectus indulti ab die 1 Iunii 1895; siquidem ipse, ut manifestat, sufficienter docet vim morbi sui, cum non potuerit obtinere prorogationem indulti ob resistentiam capitularium.

Imo, deplorat patronus, postulationem a canonico datae ad Sacram Congregationem, aliam fuisse a capitulariis suffectam, falsim confectam. Unde arguit orator, iure meritoque Sacra Congregatio prorogasse indultum tantum ad finem mensis Maii 1895, cum ulterius se non potuerunt protrahere morae itineris.

Quare concludit, non iure sed iniuria, expirato prorogati indulti termino, capitulares omnibus fructibus canonicum, ex comprobata infirmitate absentem, privavisse.

Demum, ad tertium dubium veniens, asserit orator, ad summum distributiones tantum quotidianas suo clienti denegandas esse, nempe tertiam partem fructuum praebendalium, dato sed non concesso, legitimam non adesse infirmitatis causam.

Cum capitulares adducant, quod Constitutione "I have not learned wisdom, and have not known the science of saints" Sixti V, lex facta sit, proventus et fructus omnes in distributiones quotidianas repartiendos esse, respondit patronus, utique Constitutionem cavere "proventus reditus... distributionum quotidianarum inter praesentes dividendarum et repartiendarum," sed item praebendas assignare "totidem praebendas pro sex canonicis."

[*Latin ed. p. 613*]

ROMANA 613: The taxative value or annual revenue is prescribed both in terms of the total amount and for individuals, namely "at least up to the sum and annual value of 640 solidi of gold equivalent; the Archpriest 120, and each Canon 60, and each of the aforementioned beneficiaries 40." The advocate insists that it cannot be said that all the revenues of the benefices are to be distributed in daily expenses, strictly taken, as the opponents would have it. On the contrary, the advocate argues that, in principle, not all the revenues of the benefices are to be deducted for daily distributions, according to the intention of the Pontiff who established them. For the Pontiff does not seem to intend to assign anything beyond what is common, since he expressly states in the body of the Constitution: "whatever statutes, ordinances, and decrees pertaining to the care, governance, administration, direction, and management of the same Church of St. Jerome, and of its persons, things, and spiritual and temporal goods, which are lawful and honest, and not contrary to the Holy Canons and the Council of Trent, may be changed, corrected, moderated, reformed, etc. by the Vicar of the said City." Then, the advocate argues from a later reform. Since the Sixtine endowment had not been fully effective, in the year 1782, an increase in the endowment was added, through the generosity of the members of the Ven-

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erable Hospital of Illyria, to whom the right of patronage was reserved by an instrument of transaction, recognized by pontifical authority, in which, among other things, it is stipulated "that, should it happen that, for just reasons, and with due permission, someone is absent from the Choir, or from the City, the Decree of the Holy Council and the conditions imposed by it shall always be observed, with the provision that the Chapter shall be obliged to appoint another priest in the absence of the one from the Choir or from the City." Furthermore, he argues from subsequent superannuation benefits. It is established that there were other superannuation benefits, to which, without any regard for daily distributions, the advocate states, the revenues of the canonical benefices were allocated to a total of 200 florins per month.

[*Latin ed. p. 614*]

614 In ROMA, assignations are made for the sustenance of the clergy. And since the superannuation benefits number five or six, while some are granted only for certain benefices, and others with a fixed apportionment, it seems absurd to the speaker that all these increases should have been intended only for daily distributions. From the current state of the Collegiate Church, the advocate notes, the Sixtine Constitution has not had any effect, either with regard to the choral service. For, as the advocate says, the canons only perform the divine office on feast days. Therefore, he notes, there is a lack of foundation for considering the daily distributions to be legally justified. Finally, the advocate invokes the ancient custom. He recalls that several times, those absent for legitimate reasons in this Church have received the fruits of their benefices, and that recently, the Archpriest, who soon passed away, received the income from his benefice due to a grant of leave. The Sacred Congregation could not have granted this to a client who was infirm if it were a matter of distributions made among those actually present. But, the advocate argues, if all the fruits consisted only of daily distributions, then the jurisprudence of the Sacred Congregation would have to be considered, which states that where all the fruits consist of daily distributions, two parts are to be allocated to the benefice, which are acquired even by canons in their absence, for a privileged reason for those absent, and a third part is allocated to the distributions, increasing the interest for those present.

In Venusina, 4th day of the month, 1762.

Vaivén, or Sulmona, 31st of March, 1860.

DEFENSE OF THE CHAPTER.

The Chapter did not appoint a procurator, nor did it submit any observations, which, however, were made in the performance of their duty.

Cardinal Visitor Apostolic of the Church, duly questioned about the

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information and vote, replied on November 12, 1896, that in his response dated June 18, 1896, he had adhered to the opinion of the Chapter, and that it seemed to the Chapter and to himself that the petition of Canon Givanovich, for health reasons, to reside in Ragusa, and to perform the choral service sufficiently in Rome through another, could not be rejected in any way.

[*Latin ed. p. 615*]

ROME 615, to the priest. From this opinion, the chapter refuses to deviate; but, yielding to the science and prudence of the Most Reverend Congregation, it will accept whatever that Congregation decides. This is the opinion of this chapter, and it is based on a decree of the Most Reverend Congregation of the day of April 22, 1895, in which it is expressly stated that all hope of a further extension is removed. The words of the decree are: "The Most Reverend Congregation of the Most Reverend Cardinals of the Holy Roman Church, having considered the particular circumstances, has graciously granted to the Orator an extension until the end of the next month of May, without any hope of a further extension, maintaining the form of the previous indulgence." The Most Reverend Congregation acted in the same way with another canon of the same chapter in the year 1884. The canon, Karabaic, requested the same indulgence; he obtained it for four months, due to illness, but the requested extension was entirely denied, with the following response: "Let him rejoice in what he has obtained, and let him consult his conscience." In order that the mind of the Apostolic Visitator may be more clearly understood, it is necessary to know that, to this canon who was absent, the Apostolic Visitator proposed a way of reconciliation, namely, that the canon be granted a monthly payment of 60 florins, until he returned to his duties. This proposal was not displeasing to the Apostolic Visitator, and therefore it was decreed that the consent of the canon should be sought, so that he might expressly agree to the proposed agreement. However, Nicholas considered this to be unacceptable, believing that the full fruits of the benefice were owed to him, and he insisted, in order to obtain a dispensation from the law of residence for an indefinite period. The chapter, on the contrary, opposed this, and, after the indulgence had expired, and after granting an extension for two years, they inquired about his intentions regarding a further extension, and in a meeting on April 5, 1895, they adopted the following opinion, as reported by the Archpriest, the Apostolic Visitator: "The wound, which afflicted Nicholas Givanovich, canon of this..."

[*Latin ed. p. 616*]

In the church of St. Jerome of the Illyrians in ROMANA, a certain mendicant, named P, was wounded on the 9th of March, in the year 1892, and this matter has now required our attention for the third time. Fortunately, the

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injury was of slight consequence, so that, with the exception of the first few days, he was able to attend the choir without difficulty, perform his daily duties, and sing Mass in turn. After two months, when his wound had already healed, he requested permission to leave. And the Sacred Congregation of the Council, although our Chapter, with the exception of one Canon, John Vitic, dissented, granted him permission to leave for six months by its decree of the 25th of May. However, since he continued to perform his canonical duties without any physical or moral impediment, he did not leave until the 16th of July. "The suspicion that the Chapter, with the exception of Canon John Vitic, already held, that Canon Givanovich intended a permanent absence, was confirmed when he, as the six-month grace period was about to expire, requested an extension of that same grace period for an indefinite time from His Most Holy Holiness, citing examples of our Chapter that were not true, and warning that his assailant, condemned to one year in prison, would soon be released, and would be able to walk freely in ROMA, and therefore, if he were to return to ROMA, he would be exposed to great danger. "To these requests, our Chapter, with the exception of Canon John Vitic, responded in a chapter meeting held on February 2nd of the following year, 1893. However, the Sacred Congregation of the Council granted him an extension of the same grace period for two years by its decree of March 4th of the same year, which Your Eminence ordered to be carried out on the 9th of the same month, and our Chapter, as it should have, complied. "But he, even after this longest extension has expired, dares to request a new one, adding to his requests, which Your Eminence sent to our Chapter on the 3rd of this month, in order to freely express his opinion. Therefore, I humbly..."

[*Latin ed. p. 617*]

In ROMA, the following is recorded, and two Canons, Charles Parcic and Andrew Fris, in the sacristy of our Church, on the morning of April 5th of the current year, when Canon John Vitic, although invited, did not attend; we answer in the negative. The reasons for this capitular decision are many, but the principal ones are these: "1. He who wounded Canon Nicholas Givanovich is dead in prison; therefore, this occurred more than two years ago. And this was communicated to him by letter. Which he confirms, when he no longer remembers his aggressor, nor the encounter with him; "2. The Chapter, after the suppression of two Canonicates and one Benefice by Duke Francis Cesarini, has been reduced to a small number of five persons, of whom two, namely I, the undersigned, and Charles Parcic, are already weakened by old age: Parcic suffers so much from liver ailments that he is very often unable to come to the Church. Furthermore, Beneficiaries are not appointed for many years, but their service is supplemented by priests, who are removable at will, and who are very often absent, nor can these, when they must celebrate Mass in other churches, fulfill the duties of

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any of our Canons who are absent, so that they cannot even sing Mass for him; "3. The Orator Givanovich is still of vigorous age, possesses excellent physical constitution, and is of outstanding ability, and therefore, if he fears to live in ROMA, he can obtain some benefice in Dalmatia, perhaps even a Canonicate. It should not be thought that the Austrian government would be opposed, since in this way it could retain for itself the pension of two hundred florins and more, which it pays to him annually. "Therefore, it is understandable why the Chapter hopes that the Orator will not be granted his request. "As for Canon John Vitic, he replied to me the next day that he had not attended because he did not know the time of the meeting, and that he favored the prayers of Canon Givanovich, namely, that the requested extension of his leave be granted. Nevertheless, contrary to the Chapter's vote, the Sacred Congregation decided in favor of the Orator."

[*Latin ed. p. 618*]

618 In ROMA, alia breve solutione est concessum, ut iam relatum est, sine spe ulteriore prorogatione. Nec arbitrantur ulteriore indulto succurrendum esse valetudini oratoris, quia tempus iam concessum satis et super idem consuluit, ita ut hodie non agatur de morbo physico, sed de quadam reluctantia voluntatis, quae nimis indulget phantasiae motibus. — Canones vero loquuntur de corporis infirmitatibus, quae voluntatis imperio vinci non possunt. Item advertunt canonici, medicorum attestationes non esse iuratas, prout exigit negotii gravitas et S. C. C. praxis. — Notant etiam amplius timendam non esse aggressoris vindictam, cum constet hunc in vinculis mortuum esse. — Quod factum antea negavit Givanovich, at hodie amplius non videtur contradicere. Quoad aliam quaestionis partem, nempe canonicum absentem omnibus privatum fuisse reditibus, advertunt capitulares id consonum esse transactioni in qua dicitur: « Sed si ab Urbe quispiam abfuerit sine legitima licentia, is omnes distributiones amittat, et a portione distributionum, quae absenti deberetur, deducatur emolumentum praestandum sacerdoti per Capitulum subrogando, in reliquis servetur solitum iuxta leges, constitutiones, et consuetudines eiusdem capituli. » Ipse Card. Visitator in hanc quaestionem protulit appositas animadversiones, de quibus mentionem facit in litteris suae informationis. Omnes vero capitulares, uno tantum excepto, nempe canonico Vitich, in una et altera quaestione, conclusiones intentioni oratoris adversas amplectuntur. Re quidem vera praesens quaestio potius facti quam iuris est. Quaeritur enim an reapse tali afficiatur morbo canonicus Givanovich, ut indultum mereatur a residentia, concessum a ss. canonibus pro corpore aegrotis aut aegrotantibus. Item, cum lex permittat, omnes fructus praebendarum haberi per distributiones quotidianas; facti inquisitio est an hoc iubeatur per tabulas fundationis, in

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themate. Quibus animadversis, proposita fuerunt diluenda.

[*Latin ed. p. 619*]

ROME 619. Questions I. Does the prolonged infirmity of Canon Nicholas Givanovich constitute a legitimate cause for his absence, in this case? And, if affirmative, II. Is the Chapter obligated to pay to Canon Givanovich all the fruits of his canonry in this case? And, if negative regarding the first question, III. Is the Chapter obligated to pay to Canon Givanovich all the fruits of his canonry from June 1, 1895, deducting the daily distributions amounting to one-third of all the fruits of the canonry in this case?

RESOLUTION. The Sacred Congregation, after deliberation on January 23, 1897, decided to respond: "It pleases Us, in agreement with the Eminence, the Prefect, and the Eminence, the Visitor."

TUNJA. JURISDICTION. January 23, 1897. Session 24, Chapter 12, Regarding Appeals.

SUMMARY OF FACTS. In the Diocese of Tunja, recently established in the Republic of Colombia, the Chapter of the Cathedral Church is confronted with two questions concerning the interpretation of its founding statutes and their proper execution. Therefore, both questions were considered to be closely related, as they arose at almost the same time, and the Ordinary was consulted and responded regarding both. The first inquiry was initiated by Rudesindus Arenas, the Parish Priest of the Cathedral Church. He legitimately assumed the care of souls in 1884, and received a canonical prebend, because in the chapter statutes it is stipulated: "The Parish Priest of the Cathedral Church, by virtue of being a Parish Priest, shall be admitted among the canons." Since the revenues of the canonical prebend are not distinct and

[*Latin ed. p. 620*]

620. In Tunja, six prebends are established, but they are provided from a certain tithe collected by the canons. The parish priest, through the benefit of his canonical position, participates in these revenues, just as the other canons do. The situation remained peaceful until the year 1887, when the Apostolic Delegate, at the request of the canons, decreed that the parish priest could not enjoy the canonical prebend, since this was incompatible with his parochial benefice, and therefore the parish priest should be considered only a canon in title.

The words of the decree are as follows: "In Bulla establishing the Diocese of Tunja, chapter XI reads: 'It is entirely necessary that a Chapter be established in the new Cathedral Church, consisting of canons and mansionaries, or chaplains, namely: such a Chapter must consist of two dignities, namely a Dean and a Treasurer, two canons in office, namely a Penitentiary and a Theologian, two canons, as they are called, with a stipend, and finally four chaplains. The parish priest of the Cathedral Church, by virtue of

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being a parish priest, is to be included among these canons.' Therefore, considering: 1. That only six prebends exist in the Cathedral Chapter of Tunja, and that these correspond to the two dignities, the two canons in office, and the two canons with a stipend, it is clear that a seventh prebend is lacking, which should be assigned to the parish priest of the Cathedral Church; 2. That the parochial benefice has its own revenues, of which no account is to be rendered to the Cathedral Chapter, and therefore the benefits of the care of souls and the canonry are incompatible; "We declare and decree: 'Save for the oracle of the Supreme Pontiff, the aforementioned parish priest does not require any nomination to be included among the canons, but rather under no other title than that of Canon Honorary. We decree that this present decree shall be valid only for the future, and that it should in no way apply to the past.'"

Given at Neograten, in the diocese of St. Faith, on the 9th of June, in the year 1887.

I. B. Agnozzi, Dei. Ap.

[*Latin ed. p. 621*]

TUNJA. 621 Against this decree, the Most Reverend Parish Priest of Arenas added the following to this petition: he stated that, after obtaining the parish, he had also been invested with a canonical benefice, and that, according to Chapter XI of the founding Bull, he had received the revenues; however, the Reverend Father D. Agnozzi, the apostolic delegate, through an arbitrary interpretation of the pontifical law, decreed that, even if the Parish Priest is also a canon, immediately and upon being invested with the parish, this title does not confer upon him the right to collect the revenues of such benefices, but only that he become an honorary canon. It is clear from the very words cited in Chapter XI of the decree of the Reverend Father Agnozzi that the founding Bull made no distinction or reservation detrimental to the canonical Parish Priest. It is certainly necessary that a Chapter be established in the new Cathedral Church (of Tunja), which includes both canons and mansionaries, or caretakers; namely, that such a Chapter should consist of two canons holding dignities, namely the Dean and the Treasurer; two canons holding offices, namely the Penitentiary and the Theologal; and two canons, as they say, who receive a stipend. The pontifical Bull established seven canons, distinct from each other, granting them equal rights to the benefices; and it made no distinction regarding the collection of revenues between canons of special designation and the Parish Priest of implicit designation. Hence, it seems to be a restriction limited only to the fact that the Parish Priest should be declared an honorary canon, without the right to collect the revenues assigned by the Bull itself, simply by stating: "The Parish Priest of the Cathedral Church, by the very fact that he is a Parish Priest, shall be included among these canons," with all rights, since no distinction is made. For nothing is excepted where no distinction

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is made. The apostolic delegate, in order to justify his actions, was forced to assert that the Bull established six, not seven, benefices, as can be gathered from the preceding decree, concerning which...

[*Latin ed. p. 622*]

622. The matter under consideration is: "That only six prebends exist in the Cathedral of Tunquen, and that these correspond to two dignities, two canons in office, and two canons on stipend; and that it is evident that a seventh prebend is lacking, which should be assigned to the Parish Priest of the Cathedral." However, the Parish Priest responded: "That the Bull does not expressly establish the number of prebends, but that, having designated two dignities, two canons in office, and two canons on stipend, the Parish Priest was added, and that, in this way, he was virtually co-opted among the canons, with the consent of the canons themselves." Furthermore, the consequence that the Apostolic Delegate draws from this is: "We declare and decree (saving the oracle of the Supreme Pontiff) that said Parish Priest does not require any nomination to be admitted among the canons, but that he should hold no other title than that of honorary canon." However, since this decree is contrary to both the letter and the spirit of the pontifical Bull, and to the established practice by which that Bull has been interpreted, the advocate earnestly implores that no decree be declared, since it would be detrimental to justice. The second question concerns the Canon Treasurer, the second dignity of the same Chapter. This canon, named Arias, complains that the obligations of his benefice have been altered; that, when he received the prebend, it was with an obligation, confirmed by oath, to sing the Masses on the more solemn feasts, commonly called "dies classis," and that he is now exempt from the obligation to sing Masses during the weeks that are assigned to the canons called "de merced." Through a certain decree of the Apostolic Delegate, Lord Agnozzi, this obligation was imposed upon the same Treasurer to sing Masses also during the weeks, recognizing his privilege to perform the sacred ceremonies on the feasts called "dies classis." - Against this decree, the Canon Treasurer protests today. - It should be noted that, from the records, it is not clear in what year Arias obtained his benefice, nor when the contested decree was issued, a copy of which is also lacking in the records. The Bishop, when questioned according to custom, regarding both matters...

[*Latin ed. p. 623*]

ON THE OTHER HAND. On April 27, 1890, he responded to the question: Regarding the canonical position, or regarding the second question, he stated that he had already expressed his opinion to the previous Apostolic Vicar, who did not resolve the matter, but referred it to the judgment of the Apostolic See. Regarding the canonical curate, he said that he favored giving him a just interpretation of the Apostolic Bull from the beginning.

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However, he did not confirm this opinion when he was asked again about his opinion regarding the parish priest. Regarding the treasurer, he considered, according to local custom, that he should be excused from weekly service.

SYNOPTIC SUMMARY:

First, it must be determined whether the parish priest of the Cathedral Church is also, by virtue of the erection Bull, a canon prebendary.

- It was also not omitted to ascertain the opinion of the Chapter, and its opinion was recorded in the minutes.

- A chapter meeting was held on August 17, 1892, at the request of the canons, and the Bishop was also present.

- Having already ascertained the opinion of the Chapter, which approved the Decree of the Apostolic Delegate, but with some reservations regarding what he had stated in his letters, he declared that he did not object to the opinion of the canons. Then, he proposed to the chapter the following resolution, which they unanimously accepted: that the Apostolic See be requested to separate the care of souls from the canonry; since this, which was established by the erection Bull, causes many difficulties in the present and will cause difficulties in the future; but that the current parish priest should cease to be a canon only in title. In this petition, it is worthy of note that the Bishop and the Canons acknowledge this union of the canonry with the care of souls, established by virtue of the erection Bull; and thus they manifest their intimate and universal conviction; that this was the intention of the erection Bull.

- Elsewhere, the care of souls suffers no impediment from the union with a canonry in title, to which no office or burden is attached.

[*Latin ed. p. 624*]

624 TUNQUEN. A canonical impediment to the union of the parish with the canonry was established by the Decree of the Apostolic Delegate, since it presupposes that the parish priest of the Cathedral Church must possess a canonical prebend. - To clarify this matter, I have repeatedly inquired of the Ordinary whether the care of souls in the Cathedral Church is truly attached to a benefice, but this question has not yet been definitively answered. If one attends to the words of the petition of the parish priest, who states that he "cannot assign" the "possible and scarce revenues of the parish," it should be concluded that there is no benefice, since a certain sum is required for the erection of a benefice. - Therefore, it is easily understood why the Bull of erection, without any dispensation, decrees that the parish priest be included among the canons of the Cathedral Church. Furthermore, it is beyond all doubt that the revenues of the parish priest are very meager and insufficient for proper support; indeed, after deducting the

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fruits of the canonical prebend, he was obliged to assign 60 monthly scudi to the chapter canons, as they decreed in the chapter meeting of March 19, 1890. Moreover, when measuring the incompatibility of benefices, according to the decrees of the Council of Trent, Session 7, chapter 2, De Reformatione; and chapter 17, Session 24, De Reformatione, it should be noted that benefices are incompatible if they are sufficient; nor are they compatible if they require residence; therefore, if a benefice does not provide a cleric with sufficient revenues for proper support, the Council permits the granting of another simple benefice, provided that it does not require personal residence. - From these things, it is clear that the parish benefice and the canonry are indeed incompatible, since they are not simple benefices and require personal residence. - Nevertheless, when either lacks a sufficient endowment, there is a necessary reason for a dispensation, so that they may be united, since the cleric has the right to receive proper support from his ministry. Furthermore, the office of canon and of parish priest of the Cathedral Church...

[*Latin ed. p. 625*]

INDE. 625. Canonici, per suam naturam, non sunt inconciliabiles, poiché essi esercitano il loro ministero sotto lo stesso tetto, come affermano i canonisti e, in generale, si trovano riuniti sotto un'unica chiesa. Pertanto, i Reverendissimi Padri devono decidere se, a seconda dei casi, debba essere richiesto il consiglio di Sua Santità riguardo alla dispensa dalla legge Tridentina in merito a questa questione. Sembra che si stia discutendo se il Sommo Pontefice voglia interpretare la Bolla di erezione, i cui termini o contengono già una dispensa dalla legge, oppure richiedono una menzione esplicita di una dispensa, o devono essere interpretati in conformità con il decreto degli Apostolici Delegati. Ora, passiamo alla seconda questione: se il canonico tesoriere sia obbligato a cantare la Messa conventuale in alcuni giorni solenni, deve anche cantarla durante l'intero corso della settimana. Questa questione è sollevata dallo stesso decreto degli Apostolici Delegati, i cui termini, poiché non sono presenti negli atti, non possono essere presi come fondamento di alcun diritto comune o particolare. - Il diritto comune in merito stabilisce la celebre Costituzione di Benedetto XIV, "Cum semper oblatas", dalla quale deriva per tutti i canonici l'obbligo indiscriminato di cantare, a turno, la Messa conventuale. - Per quanto riguarda il diritto particolare, l'Ordinario testimonia che nulla è contenuto nella Bolla di erezione; tuttavia, le consuetudini vigenti in quel luogo esonerano chi canta le messe più solenni durante l'anno dall'onere della settimana. Pertanto, nell'attuale situazione, si deve considerare solo l'intenzione del diritto comune, in modo da conciliarla con il diritto particolare. È certo, infatti, che tutti i capitolari devono celebrare le messe conventuali a turno; poiché il Sacro Consiglio, nella Congregazione per i Vescovi, nella relazione sulla Messa conventuale del 18 settembre 1851, al secondo

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dubbio: "L'arciprete è tenuto a celebrare e applicare la Messa conventuale a turno con i canonici, come sopra; e come deve essere osservato il turno?", rispose: "Affermativo, a turno, iniziando dall'arciprete. - Allo stesso modo, nella relazione sulla Messa conventuale di Faventina, riguardo agli obblighi del Collegio Ecclesiastico di Terra Cotiniola, al primo dubbio: "Sono tenuti a celebrare e applicare le messe...".

[*Latin ed. p. 626*]

626 TOURNOUS. Concerning the rotation of duties, both among the ancient archpriests and canons, and among the canons and mansionaries of the newly established Zarabina, the Sacred Congregation of Councils responded on June 3, 1780: "Affirmatively, regarding all, that it must be observed in turn and for a longer period." This is explained and demonstrated by Pignatelli, Volume I, Consultation 321, numbers 1 and following; Ursaya, Volume 2, Part 1, Disputation 32, numbers 7 and following; and the Rota in Fermo, regarding the conventual alms given on February 12, 1751, § 5, concerning Amedeo. All of this is confirmed by Pallottini, *Collectio omnium decisionum etc.*, Volume V, on Dignities, § 11, numbers 58 and following. Furthermore, it must be inquired how the rotation should be constituted, so that it can be observed by equal, alternating turns among the canons, so that no account is taken of days of solemnity or of the capitular dignities. However, it seems that, on days of solemnity, the conventual Mass should be celebrated by the Dignities. For Barbosa states in his work *De Canonicis et Dignitatibus Ecclesiae*, Chapter 6, number 10: "The archpriest distributed the Masses among the canons and dignities, not always to one person, but successively in order, namely, the more solemn Masses among the canons, preserving their prerogative, so that all may be honored, as the Sacred Congregation of Rites decreed in Taranto, in the Crypt, on February 27, 1610; and in the same Taranto, in the Crypt, on October 24, 1609, it was decided that the right to distribute the Masses belonged to the archpriest, preventing the second dignity from doing so, and if the dignities were lacking, the first canon would do so, and so successively; therefore, if he cannot or does not wish to celebrate, he cannot, at his own discretion, delegate the Masses to another, but the dignities and canons follow in order." Since it is most fitting when establishing the rotation to take into account both the days of solemnity and the dignities. However, so that those who celebrate on days of solemnity may be excused from the obligation of celebrating on less solemn feasts. It is now your task to resolve both questions by deliberating whether the Decrees of the Apostolic Delegation, from which the controversies arose, should be invalidated or rather confirmed; and to decide whether it pleases you that the words should be

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spoken before His Holiness.

[*Latin ed. p. 627*]

WHEREFORE, 627, whose Supreme Prince's will must be interpreted or amended in the Bull of erection, according to the following questions. I. Whether the decree of the Apostolic Delegate concerning the parish priest of the Cathedral Church is to be upheld in this case. II. Whether the decree of the Apostolic Delegate concerning the canon, the Treasurer of the Cathedral Church, is to be upheld in this case.

RESOLUTION. The Holy Office, after deliberation on January 23, 1897, decided to respond: To I. Negatively. To II. Deferred and to be considered further.

FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF SALERNO, THIRD ORDER.

March 26, in the year of Saint Francis, 1897.

In the church of the Brothers Minor Reformers, in the place of Sermo, in the archdiocese of Salerno, there exists an association of women, called the Franciscan Tertiaries. These, in their associations, wear secular clothing, and claim to precede lay confraternities, who are vested, as they walk with a distinctive mark and under the banner of Saint Francis. Against this manner of acting of the Tertiaries, the local parish priest presented an appeal to the Holy Congregation of Bishops and Regular Canons, and furthermore, the Archbishop of Salerno, upon being asked for information, reported that he had already met with the Provincial Father, who stated that the aforementioned Tertiaries ought to walk behind the bier at funerals and in processions, behind the sacred images: The Procurator, however...

COMPENDIUM OF FACTS.

[*Latin ed. p. 628*]

628 SALERNITANA. The Reformers, on August 9, 1896, defended these women, both because they proceed under their own banner and with the distinctive habit of the Order, namely, the large scapular and cincture over their garments, and because they only associate with deceased members of the confraternity.

A Synopsis. The local parish priest observes that the manner in which these women, who are dressed in various secular styles, seek ostentation and pomp in processions, is entirely contrary to the spirit and purpose intended by St. Francis in establishing the Third Order, which is why he called it the Third Order of Penance, and also contrary to various papal constitutions, which have always aimed to encourage the faithful to cultivate Christian virtues, which, the parish priest notes, cannot be achieved through the gathering of these women.

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But, the parish priest continues, the claim of the Tertiaries is also contrary to canonical jurisprudence. Indeed, from the declaration of the Sacred Congregation of Religious, dated May 31, 1642, it is stated: "The Ritual requires that, in processions, men should walk separately from women; and the Neapolitan synod, held in the year 1882, threatens suspension from the celebration of Mass for parish priests or other ecclesiastical superiors who permit women of any age to precede or follow the clergy or confratres in processions, even if the processions take place within the confines of the church."

Furthermore, he states that he has learned this from the resolution of this Sacred Congregation in Sypontina in the year 1893 (1), which permits Tertiaries to associate in funeral rites, but with their own banner, that is, the Cross, with crossed arms, and with the habit of the Third Order, only for the deceased members, provided that the association has been named according to the wishes of the deceased, or by his heir; conditions which, according to the parish priest, the Tertiaries of the place of Serino do not fulfill.

AGAINST THE FRANCISCAN TERTIARIES. (1) Reported in Volume XXVI, page 258.

[*Latin ed. p. 629*]

On the other hand, it is observed that there can be no question in law that the Third Order, even if composed solely of women, has precedence over lay confraternities, because it is not a simple sodality, but a true and proper Order, distinct from any confraternity, as stated in the Constitution of the Holy See of Benedict XIII, § 4, and in *Misericors Dei Filius* of May 30, 1883, by Leo XIII. Therefore, it enjoys the same privileges and rights as other religious orders.

REGARDING THE FRANCISCAN TERTIARYS. In this sense, resolutions have also been issued by the Sacred Congregations of Rome. Thus, the Sacred Roman Congregation declared on May 28, 1838, the following: "Regarding the passage of Apostolic Constitutions, as well as the declaration of the Sacred Congregations, E.E. and R.R., of September 20, 1748, concerning Franciscan Tertiarys who constitute a group, wearing their own habit and walking with a cross, they have the right of precedence over all lay confraternities." A similar resolution was also given in Manfredonia, in the response to the second question.

In fact, the Procurator General of the Reformeds maintains that the Tertiarys of the place are in such a condition that they can rightfully claim precedence over other local lay sodalities, provided that: 1° This association of women was canonically erected as a Third Order in the church of the P.P. Reformeds by Father Anthony from Contrada. 2° They proceed collegially under the banner of St. Francis and with the distinctive sign of the Order, namely, the large scapular and the cincture over their garments.

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3° Finally, their public association extends only to the funeral attendance of the deceased members of the confraternity.

With these points established, the following question was proposed:

"Does the Congregation of the Third Order of Franciscans, established in Serino in the church of the P.P. Minors Reformeds, have precedence over other lay sodalities in this case?"

[*Latin ed. p. 630*]

630 SALERNITAN RESOLUTION. The Sacred Congregation of Bishops and Regulars, after mature deliberation, on March 26, 1896, responded as follows: — Regarding the reformed question: "Do the Tertiary women of the Franciscan Order of the place of Serino have precedence over other lay confraternities in this case?" — Negatively, and the Tertiary women must follow, and not precede, the hearse.

FROM THE SACRED CONGREGATION OF RITES - SPOLETANA, or NURSINA. Concerning the canonization of the Blessed Rita of Cassia, a professed nun of the Order of the Hermits of Augustine. The cult of the Blessed Rita of Cassia has been celebrated from time immemorial, and was duly approved by the decree of the blessed and revered Pope Clement XII on August 13, 1737, and has spread wonderfully, not only throughout Europe, but also in both Americas. This occurred especially because, for various offices within the Catholic society, that excellent woman has been a model in every state of life, as a virgin, as a wife and mother, as a widow, and as a religious, serving as a refuge and example. Hence, on May 29, 1856, the blessed Pope Pius IX confirmed the judgment regarding the validity of the Apostolic Process.

[*Latin ed. p. 631*]

From the Sacred Rites, 631, first in the diocese of Spoleto, then in the diocese of Nursina, constructed upon the virtues and miracles in the person of the Blessed Rita, the Most Holy Pope Leo XIII, by decree of the Congregation of Sacred Rites published on June 8, 1896, granted the power that the Ordinary Process, completed in the year 1625, concerning the reputation of the sanctity of her life, her virtues, and her miracles, and concerning the ancient devotion exhibited to her, may be admitted and received in the prosecution of the cause on equal footing with an Apostolic Process, as if it had been compelled therein. However, this requires that the order of judgment be observed in the Cause of Canonization of the Servants of God, who, because of the ancient devotion approved by the Holy See, are considered among the Blesseds, so that also their virtues may be examined. Wherefore, with a prior Apostolic dispensation, granted in some similar Causes, and extended to this one, considering the particular circumstances, the doubt concerning the virtues of the Blessed Rita of Cassia was to be discussed in an Ordinary session of the Congregation of Sacred Rites, without the

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intervention and vote of the Consultors, the undersigned Cardinal, Prefect of the aforementioned Sacred Congregation and promoter of the cause, together with the Reverend Father Augustine Zampini of the Order of the Eremites of Saint Augustine, and Postulator of the same cause, in Ordinary meetings, signed on the date indicated, held at the Vatican, proposed the following doubt for discussion: "Whether it is established concerning the virtues of the Blessed Rita of Cassia, to the extent that it may be proceeded with to the discussion of miracles?" And after the report of the Cardinal proponent, the doubt, having been discussed according to custom, and all that was necessary having been duly carried out in the same cause, after having first heard the voice and written opinion of the Reverend Father Gustavo Persiani, Auditor of the Roman Rota, as Delegate to the Promoter of the Faith, the Eminent and Reverend Fathers Cardinals entrusted with the safeguarding of the Sacred Rites, considered it necessary to write to the aforementioned: "Affirmatively, or that it is established." On April 6, 1897. After these matters had been reported to the Most Holy Pope Leo XIII by the undersigned Cardinal, His Holiness, benignly concurring, ratified and confirmed the judgment of the Sacred Congregation, on the ninth day of the same month and year.

CAL CARD. ALOISI-MASELLA, - Prefect of the Sacred Rites.

L. "S. DIOMEDES PANICI, & Secretary of the Sacred Rites.

[*Latin ed. p. 632*]

632 FROM THE HOLY CONGREGATION FOR INDULGENCES: A PRAYER to fulfill the year 1900 with an indulgence of 100 days. Brno, Father. The International Committee, promoting an homage to Jesus Christ the Redeemer at the close of the present century and the beginning of the future, in order to begin its work for this purpose and to continue it under the protection of the Immaculate Virgin, humbly beseeches Your Holiness to graciously grant some indulgence to the prayer mentioned herein, for the benefit of all the faithful who devoutly recite it.

PRAYER:

Grant us, Most Clement God, through the intercession of the Blessed Virgin Immaculate, that through the tears of our repentance, we may so conform our actions to the needs of this century, both in the West and in the East, that all may be dedicated to the glory of Your name and to the Kingdom of Jesus Christ, Your Son, to whom all nations may serve in one faith and perfect charity. Amen.

The Holy Congregation for Indulgences and Sacred Affairs, exercising the faculties specially granted to it by Our Holy Father Pope Leo XIII, has graciously granted to all Christians of both sexes, who shall at least with a contrite heart and devoutly recite the aforementioned prayer, an indulgence of one hundred days, to be obtained once a day, and applicable also

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to the deceased. This is valid from the present time until the end of the year 1901, without any special dispensation. Notwithstanding any contrary provisions.

Given at Rome, from the Secretariat of the aforementioned Holy Congregation, on the 7th of February, 1897.

FR. HIERONYMUS M.,

CARDINAL GOTTI, Prefect.
L. ffi

S. ALEXANDER,

ARCHBISHOP OF NICOPOLIS, Secretary.

[*Latin ed. p. 633*]

633 FROM THE SACRED CONGREGATION OF INDULGENCES. PRAYER TO SAINT MARGARET OF CORTONA. One hundred days of indulgence are granted. Brno. Father Gennaro Perrella, priest, Rector of the Church of the Holy Raphael and Saint Margaret of Cortona in Naples, on the occasion of the centenary of the death of the aforementioned Saint, humbly beseeches Your Eminence to deign to grant the indulgence of one hundred days, once a day, to all the faithful who, with a contrite heart and devoutly, recite the following PRAYER: O most glorious Margaret, true jewel which God so lovingly rescued from the hands of the infernal thief who possessed you, so that through your marvelous conversion, your holy life, and your most precious death, you might give to all sinners an effective incentive to abandon sin by practicing good and avoiding evil, at every opportunity; deign to obtain for us, your devoted ones, from the seat of glory where your tears and penances raised you, the grace of sincere conversion of heart, true sorrow for our sins, and, after a holy life, spent in your likeness in the love of Jesus Christ Crucified for us, a good death and, in the bosom of eternal blessedness, the crown of glory. So be it. One Our Father, Hail Mary, Glory Be. That the aforementioned grace, etc., the Most Holy Congregation of Indulgences and Sacred Affairs, using the faculties specially granted to it by the Most Holy Pope Leo XIII, has benignly granted to all the faithful, of both sexes, who have recited the aforementioned prayer with at least a contrite heart and devoutly, the Indulgence of one hundred days, to be gained once a day, and also applicable to the deceased. This is valid forever, without any brief being required. Notwithstanding any contrary decrees. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on the 21st of January, 1897. Father HIERONYMUS M. CARD. A. GOTTI, Archbishop,

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Prefect. NICOP., Secretary.

[*Latin ed. p. 634*]

634 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH: A question is raised as to whether baptism can be conferred upon adult non-believers, given the fear that they might lead a life harmful to others. Reverend Father, you recently brought to this Sacred Congregation certain doubts concerning the manner in which you exercise your sacred ministry, for which you requested a response. The first doubt concerned whether it is permissible to administer baptism to young women, properly disposed, when there is moral certainty that they would, by their own parents, be given to European men, to live with them as concubines. This doubt is sufficiently answered by the decision of the Supreme Congregation of the Holy Office, which was sent to you in the year 1892, and which concerned a similar case. The words of this decision are as follows: "The Apostolic Prefect acted commendably in redeeming the poor girls in question, so that they would not be given in marriage to men who are subject to impediments to marriage, or even of a different religion, whenever such safeguards could not be obtained. However, to those girls who cannot be redeemed, and who urgently request baptism, it is not easily to be denied the sacrament of baptism, if they have been properly instructed, and if they demonstrate that they possess all other necessary dispositions, along with a firm purpose, so that they are prepared rather to die than to be defiled." Another doubt was proposed: whether it is permissible to baptize young boys who are sufficiently instructed and who request the sacrament, but who, having become adults and having left the schools of the Mission, would forget the precepts of the Catholic religion and fall into the vices of the pagans. It seems that this doubt should be answered in such a way that the aforementioned precaution does not prohibit the administration of baptism to such young men, who are well-instructed and disposed. Indeed, reason suggests that those who will face a more difficult struggle for the salvation of their souls should be strengthened more in the doctrines and sacraments of the Christian religion. Therefore, let diligent care be taken that these young men, who have been called by divine mercy to the faith and to Christian morals,

[*Latin ed. p. 635*]

FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH 635: May they be baptized and may they persevere strenuously and faithfully in the good until death. I, however, pray to God that He may assist and protect you for a long time. Rome, on the 8th of July, 1895. Your most devoted servant: CARDINAL Locó LEDOCHOWSKI, Prefect of the Seal. ARCHBISHOP LARISSEN, Prefect. A QUESTION REGARDING THE ANNIVERSARY OF A BISHOP. Most Reverend and

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Illustrious Lord, A certain question was proposed by Your Eminence concerning the day on which a Bishop ought to celebrate the anniversary of his election, to which I now address a response in these letters. According to the general rule, the Ordinary Bishop ought to celebrate the anniversary on the day on which his election was proclaimed in a secret Consistory. This has been declared frequently by the Sacred Congregation of Rites. And this is to be understood even in the case in which the Bishop has received a Brief of appointment, has been consecrated, and has taken possession of the diocese prior to the celebration of the Consistory. For the same Sacred Congregation, when questioned: "Whether the decree in Halifax, according to which the day of the Bishop's election, with regard to the anniversary to be celebrated in the diocese, is not that on which the Bull was issued, but that on which it was proclaimed in the Consistory, applies also to Bishops instituted by the Sacred Congregation for the Propagation of the Faith, who frequently receive Bulls, take possession of the diocese, and indeed are consecrated some time before the Consistory in which they are proclaimed?" responded: "Affirmatively" on December 13, 1895. Decree VIII, Quebec. But if the election was never proclaimed in the Consistory, then the anniversary ought to be celebrated on the day on which the Brief of appointment was issued. For this is the only solemn document that remains in place of the proclamation that was not held in the Consistory. Rome, 1896. M. Cardinal LEDOCHOWSKI, Prefect of the Seal and Substitute. To the Most Reverend and Illustrious Archbishops in the Federated States of America.

[*Latin ed. p. 636*]

636 FROM THE SECRETARY'S OFFICE, a BRIEF granting a plenary indulgence on the occasion of the twenty-fifth anniversary of the Most Holy Pope Leo XIII's joining of the Third Order of St. Francis. LEO XIII, POPE. For the future record. On the thirtieth day of the coming month of May, happily concluding the twenty-fifth year since We were admitted to the Third Order of St. Francis, all Catholics, moved by singular piety, under the leadership of the Most Reverend Moderator of the Franciscan Brothers, Aloysius of Parma, have decided to offer public prayers of thanksgiving to God, for having brought Us to this age, and for having preserved Us safe and sound. And We, grateful to God above all, and responding to the piety of the Christians, have judged that it is fitting to open the heavenly treasures in response to such a joyous event. Therefore, intent on increasing the faith of the faithful and promoting the salvation of souls, We grant, with paternal benevolence, to all and each of the Christian faithful enrolled in the Third Franciscan Order, who, if possible, publicly, but if not, privately, from the twenty-second to the thirtieth day of the month of May, inclusive, have held novendial prayers, and who, truly contrite and having confessed their sins and having received Holy Communion on one of the nine

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days, choosing at their own discretion, visit some public church or oratory, and offer devout prayers to God for the concord of Christian princes, the eradication of heresies, the conversion of sinners, and the exaltation of the Holy Mother Church, a plenary remission and forgiveness of all their sins, which they may also mercifully apply for the souls of Christian faithful who, united with God in charity, have departed from this life, as a form of suffrage. This grant shall be valid only for the present year. We decree that the present document, whether transcribed or in printed form, bearing the signature of a public notary and the seal of a person of ecclesiastical standing, shall have the same force and effect as the original.

[*Latin ed. p. 637*]

From the Secretariat of Briefs, No. 637, which should be used for those present, if they were to be exhibited or shown. Given in Romae, at St. Peter's, under the Fisherman's Ring, on the 23rd of February, 1787, in the nineteenth year of Our Pontificate. For the Most Reverend Cardinal Macchi, N. Marini, Substitute. FROM THE HOLY CONGREGATION OF THE ROMAN AND UNIVERSAL INQUISITION, Concerning the authenticity of the text of the epistle of St. John, I, chapter 5, verse 7. Thursday, January 12, 1897. In the General Congregation of the Holy Roman and Universal Church, held before the Eminent and Most Reverend Cardinals, as General Inquisitors, concerning the proposed doubt: "Whether it can be safely denied, or at least put in doubt, that the following text of St. John, in the first epistle, chapter V, verse 7, is an authentic text, which reads as follows: 'And there are Three who give testimony in heaven, the Father, the Word, and the Holy Ghost. And these three are one.'" After careful consideration by all, and with the opinion of the Reverend Consultors taken into account, the aforementioned Eminent Cardinals were ordered to respond: "No." On Friday, the 15th of the same month and year, during the customary audience given to the Reverend Father Assessor S. O., after a careful report was made concerning the above, His Holiness Pope Leo XIII approved and confirmed the resolution of the Eminent Fathers. I. Can. Mancini, Notary of the Holy Roman and Universal Church.

[*Latin ed. p. 638*]

638 APPENDIX V. EXHIBENSACTA SEDIS APOSTOLICAE; QUAE AUTIAMDIU EXARATA SUNT AUT QUAE TEMPORESTIVOLAVERUNT EPHEMERIDUM MODERATOREM. S. C. S. S. Rituum, 15 Novembris, 1890 — Compostellana. Dubium quoad SS. Eucharistiam observantandam. Cum Archiepiscopus, in visitatione pastoral, deprehenderit in multis ecclesiis filialis vel oratoriis alicuius paroeciae SS. Eucharistiam observari, ubi Missa celebratur solummodo vel Dominicis, vel quando sacrum Viaticum ad aegrotos ferendum sumitur; reliquum vero temporis spatium nemo illuc adit, praeter sacristam ad alendam lampadem, ianuis clausis

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ceteroquin manentibus: hinc quaeritur: An SS. Eucharistiae Sacramentum in iisdem ecclesiis servandum permittere possit. R. Negative, nisi per aliquot diei horas aditus pateat fidelibus SS. Eucharistiam visitare cupientibus. S. C. 8. Officii, 18 Martii, 1891 — Archiep. Leopolien. (rit. graec.) Dubium quoad impedimentum disparitatis cultus. Relate ad facultates Episcopis a Sanctitate sua concessas (quae etiam parochis subdelegari possunt) dispensandi in articulo mortis in impedimentis matrimonium dirimentibus, rogo quoad impedimenta mixtae religionis et disparitatis cultus benignissimam declarationem, an in istis etiam in articulo mortis non aliter dispensari possit nisi 1. ambo contrahentes promittant educationem omnis prolis in religione catholica; et quidem 2. non solum prolis forte adhuc suscipiendae, sed etiam antea (in concubinatu vel civili matrimonio) iam susceptae, in quantum scilicet hoc a parentibus adhuc dependet; atque nisi etiam 3. pars catholica (licet privatim tantum) promittat quod, in quantum poterit, conversionem partis non catholicae procurator sataget. R. Cautiones etiam in articulo mortis esse exigendas; disparitatem cultus utpote impedimentum dirimens in encyclica S. Officii 20 Februarii 1888 comprehendi: mixtam vero religionem, ut impedimentum impediens, non comprehendi.

[*Latin ed. p. 639*]

APPENDIX V. 659 From a letter of the Sacred Congregation of the Holy Office, August 7, 1891. Decree concerning cohabitation with an unfaithful spouse, etc. In Naila, the Congregation of Indulgences, IV, 5, after examining the petition presented by the Most Reverend Bishop of Kishnagore in India (1), in which that Prelate requests instructions on how to proceed regarding the interrogation of the unfaithful spouse, given the difficulties that the circumstances of his diocese present in fulfilling the existing prescriptions in this matter: the Eminent and Most Reverend Cardinals, Inquisitors General, have issued the following decree, approved on the following day by the Holy Father: "Although the unfaithful spouse, after being interrogated, promises, without offending the Creator, to continue cohabitating, it pertains to the Bishop, burdened by his conscience, to judge, with all due diligence and after considering the circumstances of each case and the customs of the region, whether cohabitation should be permitted to the party who has remained faithful, according to what is taught by the Most Holy Pope Benedict XIV in *De Syn. dioec.*, book XIII, chapter XXI, number 1 (2)."

(1) In a letter to the Eminent Prefect of the Sacred Congregation for the Propagation of the Faith (February 25, 1890), the Bishop of Kishnagore had explained the following: "I now turn to Your Eminence to kindly clarify a doubt regarding the second point of the interrogation, that is, the declaration of the unfaithful party that he or she consents to cohabiting with the faithful party without offending the Creator. In practice, such a

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promise is morally worthless and not worthy of belief in this diocese, if it were made. Here is the situation. According to the customs of this country, an unfaithful person who eats with a Christian is considered a Christian by the unfaithful, and is therefore expelled from the caste. Even his or her parents do not want to eat with him or her. Therefore, if the unfaithful party consents to cohabiting with the faithful party without offending the Creator, it is morally impossible to believe him or her, because he or she would not be considered a Christian by Christians, nor an unfaithful person by the unfaithful. If such a person were sincerely ready to break with the unfaithful, he or she would become a Christian. Therefore, to believe in such a promise in this case would be to expose a new convert to apostasy. The unfaithful person, after receiving the faithful spouse, would pay his or her fine, and he or she would be received back into the caste, dragging the Catholic spouse along with him or her."

(2) This refers to: "It is the duty of the ecclesiastical superior to exercise vigilant care so that, when an unfaithful spouse consents to remain in the marital union, this evil does not follow, that the neophyte relapse into apostasy and fall back into the darkness of infidelity. Cohabitation with an unfaithful spouse, even without offending the Creator, seems to be forbidden by the Fourth Council of Toledo, in Canon Iudae, question 28, I. However, it is expressly permitted in Chapters Quanto and Gaudemus, concerning divorces, which were issued long after the Toletan canon. Nevertheless, there are theologians of good reputation who, considering the grave danger to which the faithful spouse is exposed by living with an unfaithful spouse, even if the latter promises not to offend the Creator, still maintain that such cohabitation is illicit. See Pontius, *De Matrim.*, book 7, chapter 48, number 8 and following; and Breno, *Manual Missionariorum Orientalium*, volume 2.

[*Latin ed. p. 640*]

640 APPENDIX V. From the Sacred Congregation of the Holy Office, May 18, 1892 – Vicariate Apostolic of Zanguebar. Doubts regarding the legitimacy of marriages. Whether the following marriages are to be considered true and legitimate:

1. Marriages contracted by non-Christians under the servitude of lords, even if the man and woman can be sold separately, even if one can be emancipated without the other, even if the man, whether emancipated or sold to another, abandons his wife and children, if he has any, or is prepared to seize the opportunity to flee as soon as it presents itself.

2. The marriage of a foreigner who dedicates himself to the service of another, but without any obligation to remain with him perpetually, and who requests and obtains a woman to assist him, and with whom, by living together, marital relations are undoubtedly engaged in, even though these marital relations can easily be broken, either by the man leaving or by the

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lord reclaiming the woman he has provided.

3. Marriages contracted by non-Christians, whether free or slaves, even with a dowry, but with the understanding that they are dissoluble if divorce or polygamy occurs.

R. In response to 1. In the decrees of February 4, 1885, namely, since a general rule cannot be established from which it must be held that the marriages of non-Christians in that region are merely concubinage, an examination of the particular circumstances must be made in each individual case, and of the manner in which the marriage was originally initiated, and then of its duration and other circumstances that may have arisen. If one of the two parties is converted, while the other remains in infidelity, application must be made to the Most Holy See for the faculty by which the Reverend Provincial Vicar Apostolic may dispense from this inquiry. If, however, one party is converted after the conversion of the other, and after examining the particular case, doubt remains, the marriage must be considered null, for the sake of the Faith.

In response to 2. As in the preceding.

In response to 3. Marriages contracted, as explained, are generally to be considered legitimate, unless some other impediment of natural or divine law exists. The Most Holy See has approved and graciously granted the faculty of which mention has been made above. (See book 3, chapter 2, question 1, number 16). However, it seems quite correct that Cabassutius, in *Theoria et Praxis Iuris Canonici*, book 5, chapter 25, numbers 10 and 11, affirms that the resolution of this doubt depends on the circumstances of the cases and the customs of the regions.

[*Latin ed. p. 641*]

APPENDIX 641. V. S. C. S. Office, May 18, 1892 – Letter from Sioux-Falls. Doubts concerning marriages contracted by Indians. It is the custom among the Indians of this region to test the character and qualities of their wives, that is, to ascertain whether they are good and prudent, or not, and to abandon them if they are found to be foolish and improper. Hence, the following two doubts arise: 1. Can faith be given to them if they swear that they have never contracted marriage with their previous wives by an indissoluble bond, and if they are permitted to join themselves to the woman they now have, according to the laws of the Holy Mother Church? 2. Can these pagans, having dismissed their previous wives who are still living, take the woman with whom they now live, if they wish to be baptized and to contract marriage according to the custom of Christians?

R. To 1. Affirmative, if they are infidels, after a diligent examination of all circumstances concerning their credibility, and if there is no doubt, or only a slight doubt, about the truth of their assertion. Negative, if they are faithful [Catholics], but a legitimate proof is required. To 2. If, after a

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diligent examination, the marriage with the first woman, who has already been baptized, is found to be valid, they are entirely bound to return to her. But if she has not been baptized, it will be sufficient to inquire whether she wishes to convert. But if they do not wish to convert, or if there is serious doubt about the validity of the marriage with the first woman, they can take any baptized woman, provided she consents, with a renewed consent. – Approved by the Most Holy [Father].

S. C. S. Office, February 10, 1892 – Concerning mixed marriages. Doubts concerning mixed marriages. 1. Are marriages between a Catholic and a Greek schismatic, celebrated in Dalmatia and Albania, before a schismatic priest, valid, when no other canonical impediment exists? 2. If the contrite Catholic spouse, not being able to obtain from the schismatic party the observance of the conditions commanded by divine and natural law, promises to procure, as far as he can, the conversion of the other party, and to educate all their children in the Catholic faith, should he be admitted to the Holy Sacraments?

R. To 1. Affirmative: namely, that the marriages in question, although illicit, are nevertheless valid, unless another canonical impediment exists. To 2. Affirmative, if the Catholic party is truly contrite, after receiving absolution from censures, and after salutary penances have been imposed.

[*Latin ed. p. 642*]

642 APPENDIX V. provided that he sincerely promises to diligently care for the education of all the offspring of both sexes in the Catholic religion, and for the conversion of the schismatic faction. Sacred Congregation of the Holy Office, August 14, 1892 — A question regarding a dispensation granted by telegraph. Whether a marriage dispensation granted by the Ordinary, based on telegraphic notification, is valid before the authentic document of the granted grace has been received. Answer: No, unless the telegraphic notification was transmitted officially, with the authority of the Holy See. — Approved by the Most Holy Father. Sacred Congregation of the Holy Office, December 15, 1886 — Regarding cremation carried out against the will of the deceased. In cases where the bodies of those who are cremated are not subjected to cremation by their own will, but by the will of others, the Church can apply rites and prayers, both at home and in the church, but not until the place of cremation, in order to remove scandal. Furthermore, scandal can also be removed if it is made known that the cremation was chosen not by the deceased, but by the will of others. However, in the case of those who, with their own will, chose cremation, and persevered in this will with certainty and knowledge until death, taking into account the decree of the feast of the Fourth Vow, May 19, 1886 (d), they should be treated according to the norms of the Roman Ritual, Title: Those to whom ecclesiastical burial is not permitted. In particular cases, in which doubt or difficulty arises, the Ordinary should be consulted,

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who, having carefully considered all circumstances, will decide what he judges to be more expedient in the Lord. Sacred Congregation of the Holy Office, April 15, 1892 — Apostolic Vicariate of Nanking. Doubts regarding superstitious objects. 1. Can Christian sailors, to whom it is permitted to transport pagans with them, carrying superstitious objects to the tombs of their ancestors or to other places, themselves take these superstitious objects with their own hands from the homes of the pagans to their ships, and also, when they have reached the designated place, from their ships to the tombs of their ancestors, around which the pagans place these objects?

(1) This decree is found in Vol. XIX, page 46.

[*Latin ed. p. 643*]

APPENDIX V. 043 Do devout practices flourish? In our region, as is generally the custom, small packages belonging to those who transport goods, from the house to the church and from the church to the place where they are going, are carried by the sailors themselves. 2. There are Christians who transport, in their small packages, goods of any kind received from merchants in one market, to another market, and deliver these goods to the merchants of that place, who are destined to receive them. If among these goods there are objects of a superstitious nature, and specifically intended for the practice of superstitions, can these Christians, the sailors, transport such objects, like other goods, in their packages from one market to another, and deliver them to the merchants to whom they are sent? R. It can be tolerated, according to the form of Decree No. IV, of July 12, 1854, addressed to the Vicariate Apostolic of Tunkin Orientalis (1). — The Most Holy Father approved. Sacred Congregation of the Holy Office, May 1, 1892. A doubt regarding those who contract marriage before an un-Catholic minister. What is to be done concerning Catholics who, according to the ancient custom of our dioceses (i.e., those existing in Prussia), have been admitted to the Sacraments by confessors without special permission, even though they have contracted marriage before an un-Catholic minister? R. Those who enter into marriage before a heretical minister incur a censure; however, Ordinaries, by virtue of their quinquennial faculties, can absolve them, and can also delegate others to absolve them. Those, however, who, without a prior absolution from censures, have been absolved from this fault, are not to be disturbed, according to what has been explained. Sacred Congregation of the Holy Office, July 6, 1892. The Tridentine law is not invalidated by the non-observance of heretics. No period of time is sufficient to cause the Tridentine law to be considered as having lost its binding force in any place simply because of the non-observance of heretics. (1) This Vicariate Apostolic inquired whether it was permissible for Christians to transport pagans, even to temples of idols, with superstitious objects, or without them, in their boats. The Sacred Congregation of the Holy Office responded: "Since the actions of which we are speaking are, in themselves, licit, or at least in-

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different, and do not directly influence superstition, provided that there is no scandal, and no serious harm is threatened, they are not to be disturbed, provided, however, that they are not done in contempt of religion, and that Christian sailors make a declaration, as conveniently as possible, that they do not intend to promote superstition."

[*Latin ed. p. 644*]

644 ENCYCLICAL LETTER from the Most Holy Pope Leo XIII, concerning the marvelous presence and power of the Holy Spirit. That divine gift, which Jesus Christ, for the sake of the human race, received from the Father and through which He passed into the blessed eternity, as it pertains most directly to the eternal glory of the blessed, so also, in the course of this age, it pertains closely to the fact that men may have and cultivate that divine grace, which will ultimately blossom into heavenly life. Therefore, the Redeemer Himself ceaselessly invites all men, of every nation and tongue, to the bosom of His Church, with the greatest kindness: "Come to me, all you that labor, and are burdened, and I will refresh you. I am the life; I am the good shepherd." However, according to certain most elevated designs, He did not wish to accomplish and fulfill this work entirely by Himself on earth; but that which He Himself had received from the Father, He delivered to the Holy Spirit to be perfected. And pleasing to remember are those things which Christ affirmed in the company of His disciples, just before leaving the earth: "But I tell you the truth: it is expedient to you that I go. For if I go not, the Paraclete will not come to you: but if I go, I will send him to you." For in saying this, He made known the cause of His departure and His return to the Father, namely, that His disciples would certainly receive greater benefit from the coming of the Holy Spirit; for He showed that the Holy Spirit is sent by Him, and proceeds as from the Father, and that He is the one who will complete the work that He Himself began in this mortal life, the Consoler, the Teacher, the one who absolves. The manifold power of this Spirit, which has adorned the heavens and filled the earth (2) and the whole world (3), was providentially reserved for the perfection of His redemption. — Indeed, We have constantly striven to imitate the example of Christ the Savior, who is the Prince of Pastors and the Bishop of our souls, with His help; diligently insisting on fulfilling the same office that was entrusted to the Apostles, especially to Peter, whose dignity does not fail in his unworthy successor (4). Urged by this purpose, We have undertaken whatever is necessary in the long-standing office of the Supreme Pontificate (1).

(1) John 16:7.

(2) Job 31:13.

(3) Wisdom 1:7.

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(4) St. Leo the Great, *Sermon II* on the Universal Church.

[*Latin ed. p. 645*]

We have undertaken and are striving to promote, so that they may conspire to two principal ends. First, to establish the true reason of the Christian life in civil and domestic society, among rulers and among the people; because, indeed, only from Christ does true life flow forth to all. Secondly, to foster the reconciliation of those who are separated from the Catholic Church, either by belief or by obedience; since this is certainly the will of the same Christ, that all may be united in one fold under His Shepherd. Now, as we see the day of human events approaching, we are entirely moved in spirit to commend the work of our Apostleship, whatever we have accomplished thus far, to the Holy Spirit, who is the vivifying Love, for its maturity and fruitfulness. To the end that this purpose may be better and more abundantly fulfilled, we have decided that, at the approaching solemnity of the most holy Pentecost, we will speak to you about the presence and wondrous power of the same Spirit; how greatly, indeed, He acts in the entire Church and in the souls of individuals, and brings forth a most abundant outpouring of heavenly gifts. May it then be, as we fervently hope, that faith may be aroused and strengthened in the minds of men concerning the mystery of the august Trinity, and especially that piety may be increased and inflamed towards the divine Spirit, to whom all who follow the paths of truth and justice owe so much. For, as Basil has said, "Who will deny that the dispensations concerning men, which have been made by the great God and our Lord Jesus Christ, according to the goodness of God, are fulfilled through the grace of the Spirit?" (1) Before we address the instituted matter, it will be pleasing and useful to touch upon some things concerning the mystery of the most holy Trinity. For this is what the sacred doctors call the one and greatest mystery of the new covenant, namely, the mystery which is the source and head of all things; for the sake of knowing and contemplating which, angels were created in heaven, and men on earth. What was foreshadowed in the Old Testament, so that it might be more clearly taught, God Himself descended from heaven to men: "No man has ever seen God; the only-begotten Son, who is in the Father's bosom, He has made Him known" (2). Therefore, whoever writes or speaks about the Trinity, must keep before his eyes what the Angelic Doctor prudently warns: "When we speak of the Trinity, caution and modesty must be exercised." (1) *De Spiritu Sancto*, c. xvi, n. 59. (2) John 1:18.

[*Latin ed. p. 646*]

646 ENCYCLICAL LETTER: For, as Augustine says, nowhere is error more dangerous, nothing is more laborious to seek, nor anything more fruitful to find (1). However, danger arises from the possibility that in faith or in worship, the Divine Persons might be confused, or that a separation

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might occur within their very nature; for the Catholic faith holds that we must venerate one God in three Persons, and the Trinity in unity. Therefore, our predecessor, Innocent XII, rightly denied certain solemnities that wholly demanded honor proper to the Father. Although the mysteries of the Incarnate Word are celebrated on certain festive days, the Word is not celebrated on any particular feast, according to His divine nature alone; and even the solemnity of Pentecost was not instituted from antiquity in order that the Holy Spirit might be honored simply by Himself, but in order that His coming, or His external mission, might be remembered. All of these things have been established with wise counsel, lest anyone, by chance, be led from distinguishing the Persons to distinguishing the Divine essence. Moreover, in order to keep her children in the integrity of the faith, the Church instituted the feast of the Most Holy Trinity, which John XXII subsequently ordered to be observed everywhere; and she permitted altars and temples to be dedicated to it; and she rightly approved the religious order dedicated to the Trinity, which is wholly devoted to it and rejoices in its title, not without heavenly guidance. And many things confirm this. For the worship that is offered to the blessed Heavens and Angels, to the Virgin Mother of God, and to Christ, ultimately flows back into the very Trinity and ceases. In prayers addressed to one Person, mention is also made of the others; in the form of supplications, after each Person is invoked separately, a common invocation of all is added; and in the Psalms and hymns, the same proclamation is made to the Father, and the Son, and the Holy Spirit; blessings, rites, and sacraments are accompanied by or perfect the holy supplication of the Trinity. And the Apostle had already forewarned of this long ago, in these words: "For from Him, and through Him, and in Him are all things; to Him be glory in the ages" (2). Thus, He signifies the Trinity of Persons, and from this, He affirms the unity of nature, which, being one and the same in each Person, therefore eternal and equal majesty is due to each, just as it is due to one and the same God. Augustine, bearing witness to this, says, "It must be understood without confusion, what the Apostle says, from Him, and..."

(1) *Summa Theologica*, 1st part, question 31, article 2; *De Trinitate*, Book I, chapter 3.

(2) Romans 11:36.

[*Latin ed. p. 647*]

ENCYCLICAL LETTER 647 through Him and in Him; saying through Him because of the Father, through Him because of the Son, in Him because of the Holy Spirit (1). — And the Church, most fittingly, has accustomed to attribute to the Father those divine works in which power excels, to the Son those in which wisdom excels, and to the Holy Spirit those in which love excels. Not that all perfections and external works are not common to the divine Persons; for they are indivisible works of the

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Trinity, just as the essence of the Trinity itself is indivisible (2), because, as the three divine Persons are inseparable, so also they operate inseparably (3): but rather, through a certain comparison and proximate affinity that exists between the works themselves and the properties of the Persons, these are attributed, or, as they say, appropriated to one rather than to the others: Just as, by means of the image or likeness found in creatures, we use them to manifest the divine Persons, so also with essential attributes; and this manifestation of the Persons through essential attributes is said to be appropriated (4). In this way, the Father, who is the principle of all divinity (5), is also the cause and originator of the universe, of the Incarnation of the Word, and of the sanctification of souls; all things are through Him; through Him, because of the Father. The Son, the Word, the Image of God, is also the cause and exemplar from which all things imitate form and beauty, order and harmony; He is our way, our truth, our life, the reconciler of man with God; all things are through Him; through Him, because of the Son. But the Holy Spirit is the ultimate cause of all things, because, just as in their end, all things rest in Him, so He, who is the divine goodness and the very love between the Father and the Son, completes and perfects those secret works of eternal salvation for men, with a certain powerful impulse and sweetness; all things are in Him; in Him, because of the Holy Spirit. Therefore, with due and unwavering devotion, and with all due regard for the most blessed Trinity, it is fitting that this truth be more and more instilled in the Christian people, and for the purpose of expounding the power of the Holy Spirit, our prayer is directed. — And at the beginning, it is necessary to consider Christ, the Founder of the Church and the Redeemer of our race.

(1) De Trin. 1. vi, c. 10. - 1. i. c. 6.

(2) S. Aug. de Trin. 1. i, c. 4 et 5.

(3) S. Aug. ib.

(4) S. Th. a I, q. XXXIX, a.

(5) S. Aug. de Trin 7. 1. iv, c. 20.

[*Latin ed. p. 648*]

648 ENCYCLICAL LETTER: Indeed, in the external works of God, the mystery of the Incarnate Word excels supremely, in which the light of divine perfections shines so brightly that nothing can be conceived as superior, and by which nothing else could possibly be salutary for human nature. Therefore, this work, although it was of the entire Trinity, is nevertheless ascribed as proper to the Holy Spirit: thus, as the Gospels recall concerning the Virgin: "She was found with child, of the Holy Spirit" (1), and: "That which is born in her is of the Holy Spirit" (1). And rightly is it ascribed to Him who is the love of the Father and the Son, because this great Sacrament of piety (2) is the supreme expression of God's charity

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towards men, as John testifies: "For God so loved the world, as to give his only begotten Son: that whosoever believeth in him may not perish, but may have life everlasting" (3). Furthermore, human nature is drawn forth to a personal union with the Word: a dignity which was not granted to him through his own merits, but entirely through grace, and therefore, through the proper ministry of the Holy Spirit. To the point, Augustine says: "This manner in which Christ was born of the Holy Spirit," he says, "shows us the grace of God, by which man, without any preceding merits, in the very beginning of his nature, when he began to exist, is united to the Word of God in such a perfect union, that He is both the Son of God who is the Son of Man, and the Son of Man who is the Son of God" (4). But the works of the Divine Spirit are not only the conception of Christ, but also the sanctification of his soul, which is called unction in the sacred books (5): and thus, all his actions were performed in the presence of the Spirit (6), especially the offering of himself: "How much more shall the blood of Christ, who by the Holy Ghost offered himself unspotted unto God, cleanse our conscience from dead works, to serve the living God?" (7). — He who understands this will find nothing surprising in the fact that all the gifts of the blessed Spirit flowed into the soul of Christ. For in Him resided a singular abundance of grace, to the greatest possible extent and with the greatest efficacy; in Him were all the treasures of wisdom and knowledge, all the freely given graces, all virtues, and absolutely all the gifts which were announced in the prophecies of Isaiah (8), and which were signified by that admirable dove at Jordan (9).

(1) Matth. i, 18, 20.

(2) 1 Tim. ii, 16.

(3) John 3, 16.

(4) Enchir. c. xxxx - S. Th. 3, q. xxxn, a. 1.

(5) Acts x, 38.

(6) S. Basil, de Sp. S., c. xvi.

(7) Heb 9, 14.

(8) Is. IV, i; XI, 2, 3.

(9) Place not located.

[*Latin ed. p. 649*]

ENCYCLICAL LETTER 649, wherein Christ consecrated those waters with His baptism to the new sacrament. In this place, the words of Augustine are fitting: "It is most absurd to say that Christ, when He was already thirty years old, received the Holy Spirit, but He came to be baptized as if He were without sin, so too He was not without the Holy Spirit. Then, that is, at the baptism, He deigned to prefigure His own body, that is, the Church, in which the baptized especially receive the Holy Spirit (1)." Thus, the Holy Spirit is signified in a twofold manner: His conspicuous

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presence over Christ and His intimate power within His soul, namely, that mission of the same Spirit which is manifestly evident in the Church, and that which is secretly exercised in the souls of the just. The Church, already conceived from the side of the second Adam, as it were, asleep on the cross, first gave itself to the sight of men in a most remarkable way on the most celebrated day of Pentecost. And on that very day, the Holy Spirit began to manifest His benefits in the mystical body of Christ, with that wondrous outpouring which the prophet Joel had foretold long ago (2): for the Paraclete descended upon the Apostles so that new spiritual crowns might be imposed upon their heads through fiery tongues (3). Then, as Chrysostom writes, the Apostles descended from the mountain, not carrying stone tablets in their hands, as Moses did, but carrying the Spirit in their minds, and pouring forth a certain treasure and a fountain of dogmas and graces (4). Thus, it plainly happened that Christ fulfilled His last promise to His Apostles concerning the sending of the Holy Spirit, who, by inspiring them, would complete the doctrine delivered, and in a certain way seal the deposit: "I have yet many things to say to you: but you cannot bear them now." When, however, the Spirit of truth comes, He will teach you all things (5). For He who is the Spirit of truth, proceeding both from the Father, who is eternal truth, and from the Son, who is substantial truth, draws from both, together with His essence, the entire amplitude of truth: which truth He imparts and bestows upon the Church, diligently providing that she be subject to no error whatever, and that the seeds of divine doctrine may be nurtured (1) *De Trin.* I. xv, c. 26. (2) Joel 2:28-29. (3) Acts 2:3-4. (4) *In Matth.* hom. i; *2 Cor.* III, 5. (5) John 16:12-15.

[*Latin ed. p. 650*]

650. THE ENCYCLICAL LETTER can more and more abundantly and fruitfully contribute to the salvation of the people. And since the salvation of the people, for which the Church was born, clearly demands that this ministry continue perpetually through the ages, therefore, eternal life and virtue are supplied by the Holy Spirit, which preserves and increases the Church: "I will ask the Father, and he will give you another Paraclete, that he may abide with you for ever, the Spirit of truth" (1). For it is from Him that bishops are constituted, whose ministry not only begets sons, but also fathers, namely priests, to govern and nourish it with the same blood with which it was redeemed by Christ: "The Holy Spirit has appointed bishops to govern the Church of God, which He acquired with His own blood" (2). Both bishops and priests, therefore, possess the remarkable gift of the Holy Spirit to remit sins, according to the words of Christ to the Apostles: "Receive the Holy Spirit. Whose sins you shall forgive, they are forgiven them: and whose sins you shall retain, they are retained" (3). Furthermore, the fact that the Church is plainly a divine work is demonstrated by no other argument than by the charisms with which it is adorned throughout,

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by the Author and Giver of which is the Holy Spirit. And let this suffice to affirm that, since Christ is the head of the Church, the Holy Spirit is its soul: "As the soul is in our body, so the Holy Spirit is in the body of Christ, which is the Church" (4). — Given these things, it is by no means permissible to expect or hope for any other, greater, and more abundant manifestation and display of the divine Spirit; for that which is now held within the Church is, indeed, the greatest, and it will remain as long as it happens to the Church that, having completed its earthly warfare, it may be led to the joy of the triumphant in heavenly society. How and in what way the Holy Spirit acts in the hearts of individuals is no less admirable, although it is somewhat more difficult to understand, also because it escapes every observation of the eyes. — This outpouring of the Spirit is of such abundance that Christ Himself, of whose ministry it is the source, has likened it to an abundant stream, as is written in John: "He who believes in me, as the Scripture says, shall have a river of living water flowing from his belly" (1). The same Evangelist adds the following explanation as a testimony: (1) Ibid. xiv, 16, 17. (2) Acts XX, 28. (3) John XX, 22, 23. (4) St. Augustine, Sermon CLXXXVII, on time.

[*Latin ed. p. 651*]

ENCYCLICAL LETTER 651. This, however, He said concerning the Spirit, which those who believed in Him were about to receive (1). Indeed, even in just men who lived before Christ, the Holy Spirit dwelt through grace, as we have learned from the writings concerning the prophets, concerning Zacharias, concerning John the Baptist, concerning Simeon, and concerning Anne; for the Holy Spirit was not bestowed on Pentecost so that He might begin to dwell in the saints for the first time, but so that He might more abundantly flood them, accumulating His gifts, not beginning, nor therefore new in operation, but richer in bounty (2). However, although they were numbered among the sons of God, they were nevertheless in the condition of servants, for a son differs nothing from a servant, as long as he is under tutors and guardians (3); and, besides the fact that justice in them was not present except through the merits of Christ, the communication of the Holy Spirit after Christ is much more abundant, almost as if it outweighed the price agreed upon, and as if truth surpasses the image. For this reason, John affirmed: "The Spirit was not yet given, because Jesus had not yet been glorified" (4). Therefore, as soon as Christ, ascending on high, attained the glory of His kingdom so laboriously acquired, He generously bestowed the riches of the Holy Spirit, giving gifts to men (5). For that certain bestowal or mission of the Holy Spirit, which was to take place after the glorification of Christ, was such as it had never been before; for it had not been absent before, but it had not been of this kind (6). Indeed, human nature is necessarily the servant of God: as a creature, we are servants of God according to nature (7);

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moreover, because of the common fault of our nature, all has fallen into vice and disgrace, so that we have become exceedingly offensive to God: "We were by nature children of wrath" (8). Such was our condition that no power whatsoever could raise us up and redeem us from eternal ruin and destruction. This, however, God, the Creator of human nature, supremely merciful, accomplished through His Only-Begotten Son: through Whose benefit it was brought about that man, restored to the nobility from which he had fallen, was enriched with the adornment of gifts.

(1) John 7:39

(2) St. Leo Mag., Hom. m. de Pentec.

(3) Galatians 4:1, 2.

(4) John 7:39.

(5) Ephesians 4:8.

(6) St. Augustine, De Trin. Lib. iv, cap. 20.

(7) St. Cyril of Alexandria, Thesaur. Lib. v, cap. 6.

(8) Ephesians 2:3.

[*Latin ed. p. 652*]

652 ENCYCLICAL LETTER: The grace of the Holy Spirit is poured forth into the hearts of men; and therefore, they are clearly called, both in the sacred Scriptures and among the Fathers of the Church, "regenerated," "new creatures," "partakers of the divine nature," "sons of God," and are praised with similar encomiums. Indeed, such great blessings are not given without reason, but are properly attributed to the Holy Spirit. For He is the Spirit of adoption, by whom we cry out: "Abba, Father"; and He fills the hearts with the sweetness of paternal love. He, the Spirit, gives testimony to our spirit that we are sons of God (1). It is fitting that this be declared, as the Angelic Doctor observed, through a comparison between the two operations of the Holy Spirit: for through Him, Christ was conceived in holiness, so that He might be the natural Son of God, and others are sanctified so that they might be the adopted sons of God (2). Thus, much more nobly than in the natural order, spiritual regeneration arises from love, namely, from the uncreated Love. The beginnings of this regeneration and renewal are given to man through baptism: in this sacrament, the unclean spirit being expelled from the soul, the Holy Spirit first descends upon it, and makes it like Himself: "That which is born of the flesh is flesh: and that which is born of the Spirit is spirit" (3). And more abundantly, through the sacrament of Confirmation, the same Spirit gives Himself as a gift, by which, indeed, the martyrs and virgins obtained victory over the temptations of the devil. We say that the Holy Spirit gives Himself as a gift: "And hope confoundeth not: because the charity of God is poured forth in our hearts, by the Holy Ghost who is given to us" (4). For He not only bestows divine gifts upon us, but He is the author of them, and He Himself is the greatest gift; proceeding

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from the mutual love of the Father and the Son, He is rightly held and called the greatest gift of God. To show the nature and power of this gift more clearly, it is necessary to recall what the sacred Doctor has explained in the divine Scriptures, namely, that God is present in all things, and in them by power, insofar as all things are subject to His power; by presence, insofar as all things are naked and open to His eyes; by essence, insofar as He is present in all things as the cause of being (5). But in man, God is present not only as in things, but to a greater degree (1) Rom. VIII, 15, 16. (2) S. Th. 3*, q. xxxn, a. 1. (3) John 3, 7. (4) Rom. v, 5. (5) S. Th. a I, q. VIII, a. 3.

[*Latin ed. p. 653*]

ENCYCLICAL LETTER 653, it is known and loved by Him; for even by the guidance of nature, we spontaneously love, desire, and seek the good. Furthermore, God dwells in the soul of the just as in a temple, in the most intimate and singular manner; from which it follows that there arises a necessity of charity, by which the soul is most closely united to God, more than a friend can be to the most benevolent and beloved friend, and thus enjoys Him fully, sweetly, and abundantly. — This wondrous union, which is properly called indwelling, differs only in condition or state from that blessed embrace with which the blessed in heaven are united to God, although it is truly effected by the present power of the entire Trinity; for we shall come to Him and make our dwelling with Him (1). Nevertheless, it is particularly attributed to the Holy Spirit. Indeed, although vestiges of divine power and wisdom may appear even in an impious man, charity, which is the proper mark of the Holy Spirit, is shared by no one except the just. And it is fitting that the same Spirit is called Holy, because He Himself, the first and supreme Love, moves and acts upon the hearts to promote sanctity, which is ultimately contained in love for God. Therefore, when the Apostle calls the just the temple of God, he does not expressly call them the temple of the Father or the Son, but of the Holy Spirit: "Do you not know that you are a temple of God, and that the Spirit of God dwells in you, which you have from God?" (2) — The indwelling of the Holy Spirit in the souls of the pious brings forth the abundance of heavenly gifts in many ways. For, as the teaching of Aquinas states, since the Holy Spirit proceeds as love, He proceeds in accordance with the nature of the first gift; hence, Augustine says that through the gift which is the Holy Spirit, many proper gifts are distributed to the members of Christ (3). Among these gifts are those secret admonitions and invitations, which are repeatedly aroused in the minds and souls by the inspiration of the Holy Spirit; if these are lacking, neither the beginning of the good life is attained, nor progress, nor the outcome of eternal salvation. And since these voices and movements occur very secretly in the souls, they sometimes have similar expressions in the sacred pages, like the rustling of a breeze; and the Angelic Doctor

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aptly compares them to the movements of the heart, whose entire power is hidden within the living being: "The heart has a certain hidden influence, and therefore the Holy Spirit is compared to the heart" (1) John 14:23. (2) 1 Corinthians 6:19. (3) Summa Theologica I, q. 38, a. 2. - St. Augustine, De Trinitate, Book 15, chapter 19.

[*Latin ed. p. 654*]

654 ENCYCLICAL LETTER which invisibly vivifies and unites the Church (1). — Moreover, for the just man, that is to say, the man living a life of divine grace and acting through the various virtues as if they were powers, it is absolutely necessary to possess those seven gifts which are properly called the gifts of the Holy Spirit. For through the benefit of these gifts, the soul is instructed and strengthened so that it may more readily and promptly obey the voices and impulses of the Holy Spirit; therefore, these gifts are of such efficacy that they lead him to the summit of sanctity, and of such excellence that in the heavenly kingdom, they will endure, although in a more perfect manner. And through their power, the soul is aroused and drawn forth to desire and attain the evangelical beatitudes, which, just as flowers bloom in the spring, are signs and harbingers of everlasting blessedness. Finally, blessed are those fruits, enumerated by the Apostle (2), which the Holy Spirit produces and bestows upon just men even in this fleeting life, with every kind of sweetness and joy; such as ought to be from the Holy Spirit, who is the sweetness and gift in the Trinity, abundantly and copiously pouring forth upon all creation (3). — Thus, the divine Spirit, proceeding eternally from the Father and the Word in the light of sanctity, is the same love and gift; after having manifested Himself through the veil of images in the Old Testament, He poured forth the fullness of Himself into Christ and into His mystical body, which is the Church; and He has so salutarily recalled men who were going astray into wickedness and corruption, that they now think and desire things entirely different, as if from heaven, heavenly things. Since all these things are so great, and since the goodness of the Holy Spirit is so clearly manifested to us, it is entirely fitting that we should strive with the utmost diligence to devote ourselves to obedience and piety towards Him. Christian men rightly and excellently accomplish this, if they strive daily to know, love, and invoke Him; and for the sake of this, let this be a warning to you, as it spontaneously flows from a paternal heart. — Perhaps even today, if asked whether they have received the Holy Spirit, some would respond in the same way as certain people once responded to Paul the Apostle: "And he said to them: Have you received the Holy Ghost since ye believed? But they said to him: We have not so much as heard whether there be a Holy Ghost." (4). But if this is not the case, certainly many are very deficient in His knowledge; and because of this,

(1) Summ. th. 3, q. VIII, a. i. ad 3.

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(2) Gal. v, 22.

(3) S. Aug. de Trin. l. vi, c. 9.

(4) Acts 19:2.

[*Latin ed. p. 655*]

635. Those who frequently invoke the name of religion in their actions are often guided by a faith shrouded in deep darkness. Therefore, let those who are sacred preachers and pastors of souls remember that it is their duty to impart to the people, with greater diligence and abundance, those things that pertain to the Holy Spirit; but let them do so in such a way that they avoid difficult and subtle controversies, and that the error of those who rashly attempt to scrutinize even divine mysteries is avoided. Rather, it should be remembered and clearly explained how many and great benefits this divine benefactor has bestowed upon us, and continues to bestow; so that error or ignorance regarding such things, which is unworthy of the children of light, may be completely banished. We urge this, not only because it pertains to the mystery by which we are most closely led to eternal life, and which must therefore be firmly believed; but also because the good that is known more clearly and fully is loved and cherished more intensely. Indeed, love is due to the Holy Spirit, which we have urged to be cultivated, because God is: "Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy strength" (Deut. 6:5). And this same love is to be cherished, because it is substantial, eternal, and primary; and there is nothing more lovable than love itself: and all the more so because He Himself has abundantly bestowed upon us the greatest benefits, which, as they testify to the benevolence of the giver, so they also demand a grateful and receptive spirit. This love has a twofold benefit, and it is not a small one. For it sharpens us to attain a more and more illustrious knowledge of the Holy Spirit: for, as the Angelic Doctor says, "a lover is not content with a superficial understanding of the beloved, but strives to discover inwardly all that pertains to the beloved, and thus enters into the very depths of him"; just as it is said of the Holy Spirit, who is the love of God, that He "searches the depths of God" (1 Corinthians 2:10). Secondly, it prepares for us a greater abundance of heavenly gifts, because just as a narrow spirit contracts the hand of the giver, so a grateful and receptive spirit expands. However, it must be carefully ensured that this love is of such a kind that it does not consist merely of dry contemplation and external observance, but that it leads to action, and thus avoids sin; for this is most injurious to the Holy Spirit, in a particular way. For whatever we are, we are so much by the goodness of God, which is given to the same Holy Spirit.

(1) Deut. vi, 5

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(2) 1 Corinthians 2:10 - Summa Theologica, I, II, q. a. xxxviii, a. 2.

[*Latin ed. p. 656*]

656 This encyclical letter is especially addressed to those who, by doing good, offend Him; and those who, relying on His gifts and goodness, become increasingly insolent every day. Furthermore, since He is the Spirit of Truth, if someone sins through weakness or ignorance, perhaps he may have some excuse before God; but he who, out of malice, opposes the truth and turns away from it, sins most gravely against the Holy Spirit. Indeed, this has increased so much in our time that it seems that the very worst times have arrived, as foretold by Paul: in the last days, some will depart from the faith, giving heed to deceiving spirits and doctrines of demons (1). For God will send them a working of error that they may believe the lie (2).

Since, as we have pointed out above, the Holy Spirit dwells within us, as in His own temple, it is fitting to heed the exhortation of the Apostle: "And grieve not the holy Spirit of God, in whom you are sealed" (3). And it is not enough to avoid all that is unworthy; rather, the Christian man must strive to excel in all virtues, so that he may please that most great and most benevolent Guest; chastity and sanctity above all. For chastity and sanctity adorn the temple. Hence, the same Apostle says: "Know you not that you are the temple of God, and that the Spirit of God dwells in you? If any man defile the temple of God, him shall God destroy; for the temple of God is holy, which you are" (4): these are indeed terrible, but most just threats.

Finally, the Holy Spirit must be invoked and besought, for everyone needs His help and assistance above all. For as everyone is lacking in counsel, weak in strength, burdened by sorrows, and prone to vice, so he must flee to Him, who is the perennial source of light, strength, consolation, and sanctity. And that which is most necessary for man must be sought first from Him: the Holy Spirit is the gift of the Father and the Son; and the remission of sins is accomplished through the Holy Spirit, as through a gift of God (5). Concerning this Spirit, more is said in the order of the rites: "He is the remission" (1) II Thessalonians 2:10. (2) 1 Timothy 4:1. (3) Ephesians 4:30. (4) 1 Corinthians 3:16, 17. (5) Summa Theologica 3, question 8, article 3.

[*Latin ed. p. 657*]

ENCYCLICAL LETTER 657 concerning all sins (1). — The Church aptly teaches by what means we should implore Him, and she calls upon Him as a suppliant, and beseeches Him with the sweetest of names: "Come, O Father of the poor, come, O Giver of gifts, come, O Light of hearts: O best of Consols, O sweet Guest of the soul, O sweet refreshment." And she earnestly implores Him to cleanse, to heal, to water minds and hearts, and to grant to those who trust in Him both the merit of virtue and the outcome

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of salvation, and everlasting joy. Let us not doubt in any way whether He will hear such prayers, for we read in Scripture, "Likewise, the Spirit also helpeth our infirmity. For, we know not what we should pray for as we ought: but the Spirit himself asketh for us with unspeakable groanings," (2). Therefore, we must pray with confidence and constancy, so that He may daily illuminate us more and more with His light, and set our hearts ablaze with the flame of His charity; for thus, strengthened by faith and love, we strive eagerly for eternal rewards, since He is the pledge of our inheritance (3).

Venerable Brothers, you have what is pleasing to us to decree and encourage, concerning the fostering of the worship of the Holy Spirit: and we do not doubt that, especially with your ingenuity and diligence, there will be outstanding results among the Christian people. We shall never lack effort in pursuing this great work, and it is our intention to promote and encourage this excellent study in every way that seems opportune. Meanwhile, since two years ago, through letters from our Prudent Mother, we commended special prayers, and those prayers to promote the good of Christian unity, during the solemn feasts of Pentecost in Catholic churches, it seems fitting to decree something further on this very subject. Therefore, we decree and command that throughout the entire Catholic world, this year and in all subsequent years, a novena of prayer before Pentecost be held in all parish churches, and, if the local Ordinaries judge it useful, also in other churches and sacred places. To all who participate in this novena of prayer, and who, according to our intention, pray properly, we grant, on each of those days, an indulgence of seven years and seven quadragenary indulgences; then, a plenary indulgence on one of those days, or on the very day of Pentecost itself, or even on any one of the eight days that follow, provided they are properly absolved from sin and receive Holy Communion (1).

(1) Miss. Rom.

(2) Rom. VIII, fer. m post Pent. 26.

(3) Eph. i, 14.

[*Latin ed. p. 658*]

658 ENCYCLICAL LETTER: We have earnestly implored that those who desire to partake of these benefits may do so. We wish that those who, for a legitimate reason, are prevented from participating in these public prayers, or where it cannot be conveniently done in the church, according to the prudence of the Ordinary, may have the other conditions fulfilled privately. Furthermore, it pleases Us that, from the treasury of the Church, an endowment be made perpetually, so that if anyone, either publicly or privately, offers certain prayers to the Holy Spirit for their devotion, daily for eight days from Pentecost up to and including the feast of the Holy Trinity, and if they fulfill the other conditions mentioned above, they may again

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obtain both indulgences. These gifts of indulgences, We mercifully grant in the Lord, may also be converted into aid for the souls of the pious who are undergoing purification in Purgatory. Now, Our mind and heart turn to those intentions which We opened at the beginning; and We implore the Divine Spirit, with the utmost prayers, to bring about their fulfillment, and We shall continue to implore. Therefore, Venerable Brothers, join your prayers with Ours, and may all the Christian people join themselves to you, through the powerful and constant intercession of the most Blessed Virgin. You know well that these reasons, through the intercession of the Holy Spirit, are admirable and intimate, so that She, the Spouse of the Holy Spirit, may be fittingly called immaculate. The intercession of the Virgin has certainly been very powerful, both for the mystery of the Incarnation and for the coming of the same Paraclete to the company of the Apostles. Therefore, may these common prayers, with Her most benign help, strengthen, so that in the midst of nations so miserably suffering, the divine wonders may happily flourish through the Holy Spirit, which are celebrated in the Davidic prophecy: "Thou shalt send forth Thy Spirit, and thou shalt quicken the face of the earth" (1). — As a pledge of the heavenly gifts and a witness of Our benevolence, We impart to you, Venerable Brothers, the Apostolic blessing to your clergy and people, with all Our heart in the Lord. Given in Rome, at Saint Peter's, on the ninth day of May, in the year 1857, the twentieth year of Our Pontificate. LEO XIII, POPE. (1) Psalm 104:30.

[*Latin ed. p. 659*]

659 APOSTOLIC LETTERS, in the form of a Brief, from the Most Holy Pope Leo XIII, concerning the privileges of Latin America. Across the Atlantic Ocean, to the other part of the world, by the benign disposition of Divine Providence, opened by Christopher Columbus, the Church of God found many thousands of souls there, whom, as it was its duty and work, it sought to lead from darkness and pagan worship to humanity and gentleness, from error and superstition to communion with all the good things obtained through Jesus Christ, and from death to life. This salutary work, while the discoverer Columbus was still alive, was begun by Alexander VI, Our Predecessor, and with a constant spirit of charity, the Church has thus progressed, and continues to progress, so that in our time it has extended its sacred missions even to the extreme reaches of Patagonia. For this land, vast in extent, fertile in itself and capable of rest, if diligently cultivated and tilled, yields abundant and joyous fruits, and responds most excellently to the labors and industry of its cultivators. Therefore, Our Predecessor Popes have never ceased to send new workers to cultivate America, and in order that they might work more diligently and derive greater fruits from their work, they have endowed them with special faculties and privileges, and strengthened them with extraordinary authority and power. Encouraged by these things, the Missionaries, spreading the light of the Catholic reli-

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gion far and wide throughout the regions of America, within a short space of time, especially in those places where new inhabitants had migrated from Europe, namely the Spaniards, erected temples, founded monasteries, opened parishes and schools, and established dioceses by the authority of the Supreme Pontiffs. As a result, a large part of America can now be said to be held and spoken of, both by its ancient religion and by the origin of its language, as Latin America. But it is the nature of human institutions and laws that nothing in them should be so sacred and salutary that it cannot be altered by custom, overturned by time, or corrupted by morals. Thus, in the Church of God, in which, with absolute immutability—

[*Latin ed. p. 660*]

660 Apostolic Letters, joined with the stability of doctrine and the variety of discipline, often result in what was once fitting and suitable becoming, with the passage of time, either unsuitable, useless, or even contrary. Therefore, ancient privileges, either partially abrogated by the passage of time or otherwise rendered insufficient, have, through the singular generosity of the Most Holy Pontiffs, been supplemented with new faculties, either added under specific formulas, or usually delegated to individual Bishops of Latin America, or granted for certain extraordinary cases and specific regions; and although this series surpasses the ancient privileges in number and extent, it does not eliminate the difficulties that exist concerning the nature, validity, and number of these same privileges. To remove these inconveniences, our predecessor of blessed memory, Pope Pius IX, on October 1st of the year 1867, confirmed for a period of thirty years several of the ancient privileges granted to the Republic of Ecuador, or, where necessary, re-granted them. However, it is clearly established from ecclesiastical documents concerning Latin America, which have been collected and investigated with great diligence, that many of the privileges granted to the West Indies are either no longer in force, or are subject to doubt and require review; and We, who pursue the peoples of America with exceptional love, considering their outstanding merits for the Church of Rome, in order to remove the perplexities and anxieties in this important matter, which often trouble the Bishops of those dioceses and others concerned, We have ordered that the entire matter of these privileges be referred to a special Congregation of Our Venerable Brothers, the Cardinals of the Holy Roman Church; who, after mature deliberation, have deemed it advisable to prepare a catalog of new privileges, excluding catalogs, summaries, and revisions published in provincial councils or otherwise, and to have it approved by Apostolic authority. Therefore, having carefully considered the matter, and out of concern for all the Churches, and following the judgment of Our Venerable Brothers, the Cardinals of the Holy Roman Church, so that the clergy and people of those regions may not be entirely deprived of the memory and use of the aforementioned privileges, We grant, with

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the fullness of Our Apostolic authority, the privileges listed below to all the dioceses and jurisdictions of Latin America for the next thirty years, by these very letters. Therefore, may what is decreed be good, happy, and prosperous for all.

[*Latin ed. p. 661*]

APOSTOLIC LETTERS 661 to the Churches of Latin America: We, mindful of our pastoral duty, decree and order the following:

I. That elected Bishops residing within the jurisdictions of Latin America, after receiving the Apostolic Letters of appointment, unless otherwise specified in said Letters, may, with the assistance and presence of any Catholic Prelate, enjoying the grace and communion of the Apostolic See, and if other assisting Bishops cannot be found without grave inconvenience, receive the consecration by two or three priests constituted in ecclesiastical dignity, or by the Canons of the Cathedral Church.

II. That the celebration of the Provincial Council may be postponed for twelve years, reserving to the Metropolitan the right to convene it more frequently, as necessity may demand, unless otherwise ordered by the Apostolic See.

III. That Bishops may prepare the Sacred Chrism, which can be made even from olive oil, though truly it can be made with balsam, and the Holy Oil, with the assistance of priests who are present, and, if urgent necessity arises, outside of the day of the Lord's Supper.

IV. That Sacred Oils, even those of ancient origin, may be used, but not for more than four years, provided they are not corrupted, and that, after all due diligence, new or more recent Sacred Oils are not available.

V. That for all and only those regions or places in which, due to great distances or other serious impediments, it is difficult for Parishes or Missionaries to obtain and carry with them, on the Holy Saturday and Pentecost, the blessed water from the baptismal fonts, where they are kept, the Ordinary, in the name of this Holy See, may grant to the aforementioned Parishes and Missionaries the faculty of blessing the baptismal water with the shorter formula, as the Supreme Pontiff Paul III permitted to be used by Missionaries in Peru among the Indians, and which is read in the appendix to the Roman Ritual.

VI. That if, due to lack of time, improper fatigue, and other serious reasons, it is difficult to use all the ceremonies prescribed for the baptism of adults, Parishes and Missionaries, with the prior consent of the Ordinary, may use only those rites which are designated in the Constitution of Paul III, "Altitudo," of June 1, 1537. Furthermore, that in the same matters, the Ordinary, in the name of the Holy See, may grant to the Parishes...

[*Latin ed. p. 662*]

662. APOSTOLIC LETTERS and Missionaries: Regarding the use of the

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order of Baptism for infants, burdened by the awareness of the grave necessity of such a practice among the aforementioned Ordinaries.

VII. That in all and each jurisdictions of Latin America, without exception, all priests, both secular and regular, as long as they reside within these jurisdictions, and no others, may each year, on the second day of November, or the following day, according to the rubrics of the Roman Missal, on which day the commemoration of all the faithful departed is observed by the universal Church, celebrate three Masses, provided that they receive only one offering, namely for the first Mass only, and in that amount which has been regularly prescribed by the Synodal Constitutions or by local custom; and that the fruit of the second and third Masses be applied not for a particular deceased person, but for the suffrage of all the faithful departed, according to the Constitution of Pope Benedict XIV, "Quod expensis," of August 26, 1748.

VIII. That all the faithful may fulfill the annual precept of Confession and Communion from the Sunday of Septuagesima until the octave day of the Solemnity of the Body of Christ, inclusive.

IX. That all the faithful may obtain the indulgences and jubilees which require Confession, Communion, and fasting, provided that, if they reside in a place where it is utterly impossible or very difficult to have access to a confessor, they are contrite of heart with a firm purpose of confessing as soon as they are able, or at the very least within one month.

X. That Indians and Negroes may contract marriages within the third and fourth degrees of consanguinity and affinity.

XI. That Indians and Negroes may receive the blessing of marriage at any time of the year, provided that they do not use any pomp or ceremony during those times in which marriages are prohibited by the Church.

XII. That Indians and Negroes are not obliged to fast except on the sixth days of Lent, on Holy Saturday, and on the eve of the Nativity of Our Lord Jesus Christ.

XIII. That furthermore, Indians and Negroes may freely use the indulgence granted during Lent, without any burden or offering of alms.

[*Latin ed. p. 663*]

APOSTOLIC LETTERS 665 are wrongly said to be granted, and by which the faithful of a particular diocese or region are given [certain permissions] from the Apostolic See; therefore, all may eat meat, wool, and dairy products on all days, except for the days of fasting noted in the aforementioned paragraph xii. XIV. Whenever, in matters that are either criminal or concerning any other ecclesiastical affairs, an appeal arises from judgments previously rendered, if the first judgment was issued by a Bishop, the appeal shall be made to the Metropolitan; if, however, the first judgment was issued by the Metropolitan himself, the appeal shall be made to the

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nearest Ordinary, without any further decree from the Apostolic See; and if the second judgment conforms to the first, it shall have the force of a final judgment, and its execution shall be demanded by the one who issued it, notwithstanding any appeal; but if the two judgments, whether issued by the Ordinary and Metropolitan, or by the Metropolitan and the nearest Ordinary, are not in conformity, then the appeal shall be made to another Metropolitan or Bishop, the one nearest to him from whom the first judgment was issued, within the same province, and two out of the three judgments shall be considered in conformity, which we wish to have the force of a final judgment, and the one who judges last shall enforce them, notwithstanding any appeal. Furthermore, recourse to the Apostolic See must always remain fully available, even without an intermediate step, either before or after the judgments of lower judges, in accordance with the law; and in the use of this privilege, the following conditions must be strictly observed: 1° That in each case, the right of every litigant to appeal to this Apostolic See, even after the first judgment, shall be preserved; 2° That in each act, mention shall be made of the Apostolic delegation; 3° That the causes shall be reserved to this Apostolic See, in accordance with the Sacred Council of Trent; 4° And that in matters concerning marriage, those things shall be observed which are set forth in the Constitution of Benedict XIV, which begins with the words "Dei miseratione." V. By Our Apostolic authority, all and each of the privileges granted to the West Indies, by whatever name or form, previously granted by this Holy See, are abolished and annulled. Contrary provisions, even those deserving of special and individual mention, notwithstanding. Given at Rome, near Saint Peter, under the Fisherman's ring, on the solemn day of Easter, April 18, 1887, in the twentieth year of Our pontificate. A. Card. MACCHI.

[*Latin ed. p. 664*]

664. BRIEF of the Most Holy Pope Leo XIII, addressed to the Most Reverend Cardinal Richard, Archbishop of Paris, concerning the authors of the periodical *Revue anglo-romaine*.

Beloved Son, health and the Apostolic blessing. – Considering the matter of religion among the English and the eternal salvation of souls, We recently published the Apostolic Constitution, as you know. In it, We intended to definitively judge and completely resolve a very serious matter concerning Anglican ordinations, a matter indeed defined by Our predecessors long ago, but which We, with greater leniency, entirely revoked. And We certainly accomplished this with such weight of argument and with such clarity and authority in the formulations, that no prudent and well-intentioned person could bring Our judgment into doubt, and that all Catholics should embrace it with the utmost obedience, as something perpetually firm, valid, and irrevocable. But We must confess that some Catholics have responded in a way that has caused Us considerable sorrow.

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We have communicated this to you, Beloved Son, because the periodical *Revue anglo-romaine*, which is published here, is particularly concerned with this matter. For there are among its authors those who, instead of defending and explaining the Constitution as is fitting, rather undermine it through tergiversation and disputation. Therefore, it is necessary to be vigilant, so that nothing emanates from such a periodical that does not fully agree with Our intentions; and certainly, it is better to cease publishing altogether and to remain completely silent, when such intentions and the best principles present difficulties. Similarly, when certain men from England, who seemed to sincerely desire to inquire of Us about the truth of the matter concerning their ordinations, received the very truth that We declared before God with a completely different disposition, it clearly follows that the Catholics whom We mentioned above, and among them some religious men, should recognize their duty. It would now be neither just nor proper for them to join with or in any way support those men; and this could greatly hinder the hoped-for growth of religion. Therefore, concerning these matters which are of great importance, We place great confidence in the prudence and sagacity of you, Beloved Son; and We anticipate divine benefits and a special witness.

[*Latin ed. p. 665*]

BRIEF 665, With paternal benevolence, we impart to you our Apostolic blessing. Given in Rome, at Saint Peter's, on the ninth day of November in the year one thousand eight hundred and ninety-six, in the nineteenth year of Our Pontificate. LEO XIII, Pope.

FROM THE HOLY CONGREGATION OF THE COUNCIL OF BURDEAUX. DISPENSATION REGARDING MARRIAGE. December 12, 1896. Session 24, chapter 5, concerning dispensations in marriage. SUMMARY OF THE CASE.

In the native town of the Archdiocese of Burdeaux, a young woman named Germana, twenty years of age, was, on June 10, 1890, joined in marriage to Eugenius, a man highly esteemed for his skill in the art of architecture, the marriage having been celebrated according to the Tridentine form. These nuptials, it is said, were contracted solely at the desire of Germana's parents, as the young woman herself appears to have been unwilling to marry Eugenius, and the marriage proved most unhappy. After the marriage ceremonies, as the couple departed from the town of R., they requested lodging in the city of Libourne and later in Morlaix, where Eugenius was obliged to carry out his duties. During this time, they shared the same dwelling, but, if the testimony of Germana is to be believed, the husband abused the rights of marriage in a scandalous manner. For, having neglected the legitimate consummation of the marriage, he indulged only in infamous acts. Afterwards, he cast the unfortunate woman out of the marital bed and, finally, during the harsh winter, he forced her to spend

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the nights in a barn. For nearly a year, Germana endured this manner of treatment from her husband, until, on one occasion when she sought medical attention for her health,

[*Latin ed. p. 666*]

666 BURDIGALAE. She returned to her parents' home. Then, Eugene went to the courts to obtain a civil divorce from his wife, which he easily secured. Without shame, he took another woman and legally bound her to himself in Africa. Later, in the year 1894, she fled to the Supreme Pontiff, pleading that her marriage be declared null, since it had been entered into under moral coercion from her parents, or at least that a dispensation be granted for this marriage, which was certainly not consummated. The Archbishop of Burdigala, to whom the usual petitions had been sent by the Sacred Congregation, established a tribunal, and a delegated judge conducted the proceedings. The plaintiff was questioned, along with her witnesses, and at the same time, several declarations were received from prominent individuals, praising the religion, piety, and truthfulness of Germana and her family. Then, the woman was subjected to a medical examination, with all the prescriptions of the Sacred Congregation being observed. The husband was also summoned, who did not hesitate to answer freely, stating that he had settled all matters concerning his marriage through the civil divorce decree. Once the proceedings were completed, the records were sent to the Sacred Congregation. However, before the case was presented for a full hearing, the plaintiff abandoned the question of nullity, instead requesting permission to reopen the proceedings, so that certain omissions might be rectified and so that the priest Bardon might be given the opportunity to correct something in his deposition.

A SYNOPTIC DISCUSSION: DEFENSE OF THE WOMAN. The first argument in favor of the lack of consummation was drawn by the advocate from the sworn testimony of the plaintiff, who stated: "We went to Libourne, where we stayed with the parents of Mr. Eugene. In the family, I was told to grant my husband what he requested. I knew nothing about marriage—he introduced his virility into my mouth—and because he was afflicted with a venereal disease, it resulted in a disease of the mouth for me, which..."

[*Latin ed. p. 667*]

BORDEAUX. 667, manifestando grandes cuidados e da qual ainda não estou completamente curada — e a minha mão também tocou o vaso da mulher —. Eu considerei esses relatos normais e regulares — tudo se limita a isso, esta noite e no futuro. E pouco depois, ela confirmou o mesmo: "Vocês afirmam com toda certeza que não tiveram com o Sr. Eugène nenhuma verdadeira relação matrimonial e que preservaram sua virgindade? — Sim, e eu preservei minha virgindade. A essa afirmação juramentada

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deve-se absolutamente acreditar, diz ele; pois se trata de uma jovem imbuída dos melhores costumes e muito religiosa, cujos elogios todos os testemunhos elevam aos céus, e que o que ela afirmou ao Juiz é acreditado sem a menor dúvida. E aqui, o advogado relata uma longa série de testemunhos que, em sua totalidade, favorecem a causa de Germana. Essas testemunhas, parentes e familiares de Germana, asseguram, continua o orador, sobre ela e seus pais, e a Curia Arquiepiscopal confirma, escrevendo: "Consideramos verdadeira a afirmação da esposa, uma pessoa muito piedosa e muito sincera. Permitam-nos dizer que a esposa, vítima de uma união infeliz, é digna de um vivo interesse por sua piedade, sua sinceridade e a honestidade de sua vida, e que seus pais são, além disso, pessoas honradas. — O pai da esposa é, há muito tempo, o primeiro magistrado de sua comuna. Obediente às diretrizes Pontificais e praticante Católica, ele aceita o governo estabelecido, desejando acima de tudo o bem do país e da religião. A Sra. mãe é piedosa e caritosa. — Essa família é cercada na região por respeito e consideração." E não falam de maneira diferente, diz o advogado, homens muito sérios, muitos dos quais pertencem ao círculo eclesiástico. Portanto, observa o advogado, quando a autoridade máxima de juramento se junta à autoridade máxima do que jura, já não se pode duvidar da incompletude do casamento. Nem, de fato, as prescrições legais, nem mesmo a própria S. C. C. disciplina sobre a incompletude do casamento permitem a dúvida. Em ambos os foros, para...

[*Latin ed. p. 668*]

668 BURDIGALEN. A most certain rule is held, namely, that, when questions arise, it provides a way to ascertain the truth through oath-taking. "The religious practice of oath-taking is of the greatest benefit in resolving disputes." Gaius in I. 1D. de reg. iuris 2, 12. "And this is certain, as long as it is not established that the oath was false, because then there is a presumption of law in favor of the one who swore, that he swore truthfully out of reverence for the divine name." Reiffenstuel ius can. univ. ad tit. XXIV, I. II, § V, n. 141. And finally, according to ancient custom, a marriage was declared invalid if the husband was impotent at the time of its celebration: if, after attempting intercourse for three years, the spouses had not been able to consummate the marriage. c. Requisivisti 2, c 33, q. 1, Glossa ad cap. Accepisti 1 de frigid, et malef. verb. iudicium, cap. Laudabilem 5 et litterae vestrae 7 eiusd. tit. Therefore, he argues, if marriages were declared invalid solely by oath, then much more readily should dispensations be granted, since, in judgments concerning dispensations, the law itself commands that one should depart from the strictness of the law. "In summary, and in a gracious judgment of dispensation, the proofs required are not as severe and rigid as in a judgment concerning the nullity of marriage, but conjectural and supportive evidence seems sufficient regarding the lack of consummation." Pallottini voc. dispensatio matr. rat. et non cons. § XII, n. 180.

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Regarding the practice of the Sacred Congregation, the advocate presents several examples of cases in which the sole, or almost sole, argument in favor of the lack of consummation was the oath of the religious spouse. Thus, in Tergestina on April 21, 1877, in Parisien on December 15, 1894, in Augustodunen on July 15, 1893, in Leopolien or Premislien in June 1896, and in Neapolitana on December 20, 1828, from which Pallottini rightly concludes that, even solely by the authority of the oath, if other arguments are lacking, the lack of consummation can be demonstrated: "The oath, even if nothing else is available, seems sufficient; but it is even more so if the one swearing is a person of proven conscience," voc. dispensatio matrimonii rati et non consummati § XII, n. 87, 88, and from many other cases this is deduced. The advocate, proceeding to the argument from virginity.

[*Latin ed. p. 669*]

BORDEAUX. In the course of the investigation, it is noted that, in the physical examination, all the mandates of the Sacred Congregation [of the Holy Office] were observed, by the midwives and physicians who were favorably disposed towards the virginity of Germana. However, the advocate argues that it would be futile to object at present that her virginity is not certain, but merely probable. For, if anyone were to consider with a discerning eye all the signs that Germana's genitalia present, it would be easily understood that the virginity of the woman is not only probable, but absolutely certain. Both the physicians and the midwives asserted that the external appearance of her genitalia was the very same as that which is usually found in women who have not yet reached puberty. The advocate further emphasizes that, regarding the hymen, both the midwives and the physicians held similar opinions. Although they reported having found a very small tear in it, they did not, in any way, attribute its origin to the consummation of marriage. Moreover, when questioned by the judge, whether such a conformation of the genitalia ever occurs, even after a single or multiple brief conjugal acts, they unanimously and openly denied it. "Do you not believe," asked E., "that the cessation of conjugal relations is sufficient to explain the current state of the genitalia, given that the consummation of marriage has taken place, and the conjugal act has been rare?" To this, midwife Barruet replied: "There is at least one sign that the cessation of conjugal relations would not explain: it is the existence of the hymen." Midwife Chartron added: "The cessation of conjugal relations would not explain the almost complete integrity of the hymen." "Everything can be explained," she concluded, "except for the persistence of the hymen." Having thus far presented his arguments, the advocate adduces further evidence, or circumstantial arguments, which, in his opinion, are so weighty that, if necessary, they would, by themselves, establish the entire case. He recalls, first of all, the confession of Eugenius, who, at a time when he was not certainly suspected, affirmed to a very close acquaintance that

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he had abstained from legitimate intercourse; and for this reason, he had taken a wife, so that, having omitted the consummation of marriage, he might satisfy his lust. Furthermore, the advocate mentions that Eugenius...

[*Latin ed. p. 670*]

670 BURDIGALA. Regarding the matter of the annulment. If the accused himself had not been so burdened by grave accusations, he would have repelled them with every effort. The advocate, above all, wishes to emphasize that the woman, Germane, was afflicted with a venereal disease in her gums, while her genital organs, upon examination, were found to be entirely free from any such affliction. The physician, Charles Montalier, with considerable authority, affirms, in words even more explicit than those he had previously written, and now testifies under oath: "I examined the mouth of Mademoiselle Germane during the course of April 1892. I observed distinct mucous patches characteristic of syphilis. The treatment with mercury produced the usual results in cases of venereal disease." This is confirmed by the midwife, Douât: "I observed (June 5, 1892) in the mouth very pronounced syphilitic lesions. I then examined the genital organs, using a speculum. I found absolutely no trace of syphilitic disease." Therefore, the defender of the advocate exclaims, the force of this argument is such that the Most Reverend Archbishop of Burdigala wrote to the Sacred Congregation: "I believe that there is here sufficient reason to form the conscience of the Most Eminent Judges of the Sacred Congregation." Finally, another argument was presented to the advocate through a supplementary process. For the midwife, Douât, not only testified that she found Germane to be a virgin, but also confessed that the laceration of the hymen was due to an instrument used by herself. And in conclusion, the advocate recounts the words of the Most Reverend Archbishop, who so eloquently commends the case of the advocate: "This matter is particularly worthy of consideration due to the brutal conduct of the husband towards the poor victim, of whom he had the audacity to make a slave rather than a wife. And what a slave!" Finally, speaking of the reasons for the dispensation, the advocate observes that these are very serious, and require demonstration. For the innocent girl was, for almost a year, not a wife, but a slave,

[*Latin ed. p. 671*]

BORDEAUX. In the year 671, a most unfortunate marriage was entered into, not freely, but only through the persuasion of her parents. Furthermore, Eugenia was already bound by a civil marriage to another woman, and Germaine, in the bloom of her youth, was exposed to the dangers of lust.

OBSERVATIONS OF SAINT VINCENT. The defender of the marriage argues that Germaine's marriage was not only valid, since it was not entered

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into under any coercion, but also consummated. He states that the spouses were suitable for the marital act and lived together for a long period of time. This strong presumption of consummation, however, is not even refuted by the testimony of the midwives, who, at the order of the Judge, examined Germaine's body. Let the testimony of the midwife Maria Mesuard be heard, who concludes: "In the present case, we cannot absolutely affirm the state of Germaine's virginity; nor can we deny it. Indeed, the firmness and slight development of the labia, as well as the small width of the vulvar opening and vaginal canal, are characteristics of virginity, but the median tear of the hymen, despite its small extent, prevents us from absolutely concluding that she is a virgin." Therefore, the arch-physicians Arnozan and Dubreuilh, after reading the documents and hearing the midwives' testimony, dare not proclaim Germaine's certain virginity. And they address the urgent Judge: "Could the current state of these parts (fragments of the hymen... myrtiform caruncles, rosy color... very narrow vulvar opening) not be explained by the fact that the marriage was consummated, due to the extreme rarity of the act and the cessation of all intercourse for several years?" The arch-physician Dubreuilh readily replies: "Yes, of course, the current state could be explained." The defender of Germaine, not fearing the unanimous opinion of the midwives and the contrary judgment of the physicians, continues, but he argues that it is not right, because, from all that they observed in the woman's body, it seems certain that the marriage was not...

[*Latin ed. p. 672*]

672 BURDIGALAE. Concerning the matter. But this opinion is in no way accepted by the defender, and indeed, besides the fact that, especially in our age, learned individuals are wont to abound in favor of the woman who is being investigated, the physician Dubreuilh is present in the case, who, in response to the question posed to him by the Judge: "What is your opinion regarding the reports and testimonies of the three midwives, of which you have had knowledge?" replied: "They are well-founded, but perhaps a little exaggerated in the direction of optimism, favorable to the cause of the plaintiff." However, the orator argues, the impediment to the marriage is not proven by the obstinacy of Eugenius, saying that he himself, if the accused had not been present, would have had to repel such scandalous accusations. For Eugenius also denounced Germana before a lay magistrate as a woman lacking in conjugal fidelity; the judge, on that account, annulled the marriage. Germana, although she could have and should have appealed against that judgment, nevertheless did not appeal, nor did she offer any evidence during the proceedings to refute the accusation of the crime imputed to her. Therefore, the conduct of Germana in the civil court and the presence of Eugenius in this court demonstrate only this: that Germana and Eugenius, who equally desire the marriage to be dissolved, appear to be at odds with

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each other in appearance, but in reality, they are in complete agreement; and that Eugenius accused Germana of a lack of conjugal fidelity with her consent, as Germana, with her consent, accuses Eugenius before the ecclesiastical judges of being the cause of the impediment to the marriage. And such comedies are not uncommon among the French, especially. Furthermore, the defender insists, the testimony of the physician Montalier and the midwife Douat, who state that Germana was afflicted with a venereal disease, does not prove the impediment to the marriage, because Germana says that she herself introduced the disease into Eugenius' mouth: for Eugenius was suffering from a venereal disease. Indeed, Germana could have contracted syphilis in a thousand ways, and not only through contact with Eugenius. Therefore, according to the defender of the sacrament, since the matter is hopeless...

[*Latin ed. p. 673*]

Bordeaux. In the year 673, perceiving the case to be delicate, the defender of the German woman did not submit the matter, but considered new examinations of witnesses. And although it is stated in Clement, chapter 2, concerning witnesses: "That, when witnesses have been duly received and their testimonies have been made public, it is not permissible to produce other witnesses, or the same witnesses again, either directly or in opposition to the same articles in the principal cause; so also it should not be permissible in a cause of appeal, since in appeals, as in the principal cause, subornation is to be feared," nevertheless, he obtained, both once and again, and the same and other witnesses to be heard, after the witnesses had been duly received and their testimonies made public. Indeed, he argues that, even though Benedict XIV, in the constitution *Dei miseratione*, declares: "Whatever has been done in judgment without the defender of the bond being cited or notified, we declare to be null and void," nevertheless, the defender of the German woman presented a large body of evidence, which he easily gathered in the absence of the judge and the advocate for the marriage. However, the advocate of the woman claimed that the Sacred Congregation had sometimes granted a dispensation, considering only the oath of the spouses, concerning whose religion seven witnesses testified. Whoever, the advocate contends, brings forward witnesses from the opposite side, and other similar cases, will immediately discover that the witnesses there, not only testify concerning the religion of the spouses, but also concerning facts which they themselves have observed, or heard with their own ears, or which they have received from trustworthy persons, or from the spouses at a time when they were not suspected, will testify. It has been explored that the Most Holy Fathers, whenever witnesses swear concerning the religion of the spouses, but do not present facts of great importance in confirmation of the asserted consummation of the marriage, have responded against the alleged dispensation. It suffices to refer to the

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decree *Scepusien, De dispensatione matrimonii*. There, spouses affirming the consummation of the marriage, all of whom are trustworthy in every way, not only proclaim the truth with one voice, but also with a crown of witnesses from both sides, and even with witnesses brought in by the court. Furthermore, witnesses were brought forward who testified to the actions of the wife towards her husband, *Acta, Tom. XXIX, fasc. CCCXLVII, 43*.

[*Latin ed. p. 674*]

674 BURDIGALEN. Aversionem ab initio, post benedictionem nuptiarum confirmantem. Exemplum tertio die post celebrationem matrimonii, uxor viro, propter causas negotiales patriam relinquenti, clam exclamavit: "Utinam collum frangat et diabolus eum auferat." Tamen, Sacra Congregatio, die 18 Martii 1893, ad dubium "An consulendum sit SSm. pro dispensatione a matrimonio rato et non consummato in casu," respondit: "Negative" (1). Nec aliter esse potest, addit. Confessio enim coniugum, contraria matrimonio, cum coniuges matrimonium dissolvi cupiunt, nihil aliud est quam confessio favorabilis confitenti, quae, quamvis iurata, in contractu probationem ullam constituit, et ideo nec in causis matrimonialibus, ut testatur Sánchez De Matrimonio, lib. 2, disput. 45, num. 33: "Confessio, cum sit in favorum confitientium, nihil probat." Testes septimi, si contenti iurare de religione coniugum, de factis per coniuges assertis testari ad formam iuris non possint, in consideratione haberi non possunt, quia, ut experientia docet, ipsi litigantes primum eos interrogant, et non nisi quos in verba inducentes iurare paratos invenerint, petunt. Falsum denique est, concludit defensor vinculi, asserere probationes in dispensationibus requiri minores, quam in iudiciis nullitatis matrimonii. Ad rem, satis et superest ea recolere quae Sacra Congregatio tradidit in decreto "Ut 11 entina seu Mediolanen," die 18 Martii 1732: "Quamvis dispensatio sit gratia, tamen non habet locum nisi cum certitudo adest matrimonii tantum rati et non consummati; adeo ut causa de dispensatione sit magis rigorosa et probationes uberiores exiga, quam illa de nullitate." Et merito: nam in iudiciis nullitatis, jus divinum laeditur, non solum cum matrimonium validum cassatur, sed etiam cum irritum validis accensetur, quia per hoc ad concubinatum damnantur pseudoconiuges; at si dispensatio super rato et non consummato.

[*Latin ed. p. 675*]

BORDEAUX. In the year 675, marriage is denied, but no injury results from this; however, the divine precept – "What therefore God hath joined together, let not man separate" – is violated if a consummated marriage is dissolved. With these premises, the question was posed: Whether dispensation should be granted concerning a marriage that is valid but not consummated. RESOLUTION. The Sacred Congregation, after deliberation on December 12, 1896, decided to respond: Affirmative. PRECEDENTS FROM

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NAPLES. On January 25, 1897, Session 25, Chapter 12, Regarding Reforms. SUMMARY OF THE CASE. In the town of Torre Annunziata, within the Archdiocese of Naples, there are four ecclesiastical sodalities, one of which, called the Most Holy Sacrament, had long ago been honored with the title of Archiconfraternity. Another sodality, established under the invocation of the Most Holy Rosary, also began to aspire to this same title; therefore, the Archdiocesan Curia urged it to present its desire to the Holy See in order to obtain the desired title. The Curia readily accepted the request and, having ascertained that in the town of Torre Annunziata, no other sodalities opposed this petition, it facilitated the fulfillment of the sodality's wishes. Indeed, on April 29, 1890, this matter received a decree in the *forma* of a Brief, by which the title of Archiconfraternity was granted. However, this honor immediately aroused emulation in another confraternity, which bears the names of Saint Augustine and Saint Monica. Feeling that it was being denied precedence...

[*Latin ed. p. 676*]

676 The Neapolitan authorities had lost their rights, and it was decreed that they should always walk last in processions, even if their confraternity were older, and even if they were considered more worthy among the citizens, and that they should petition the Holy Father for the same title of Archconfraternity. The Neapolitan Curia readily agreed to this request, all the more so because, through subsequent investigations, it had learned that the information it had received regarding the confraternities and their status had not been entirely accurate from those who had been consulted previously on the matter. For it was said that the local authorities had been deceived, and that the same authorities had led the archiepiscopal Curia into error regarding the confraternity of the Most Holy Rosary, which had been elevated to the dignity of Archconfraternity. For it was later discovered that the confraternity of Saint Augustine and Saint Monica enjoyed greater seniority and possessed more suitable requisites. Therefore, on December 3, 1890, it was requested that the confraternity of Saint Augustine and Saint Monica also relinquish its title of Archconfraternity, in order that there might be no hatred or animosity arising from the precedence granted to the confraternity of the Most Holy Rosary. Furthermore, it was requested that the grace of Archconfraternity be granted to the confraternity of Saint Augustine and Saint Monica, with the stipulation that it should retain precedence in the same way as before. However, the confraternity of the Most Holy Rosary, in the meantime, submitted a petition to the Holy See, imploring that the request of the other confraternity not be granted. The Archbishop considered it more appropriate to pursue a path of reconciliation, proposing that the confraternities should alternate in enjoying precedence in public functions, so that, beginning with the confraternity of the Most Holy Rosary, it would precede the other for one full year, and

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in the following year, it would grant precedence to the other confraternity, and so on. However, the confratres of the Most Holy Rosary refused to accept this proposal for reconciliation. The Ordinary enumerated the harmful consequences of this contention. Subsequently, the confraternity of Saint Augustine and Saint Monica appealed to the civil authorities, first through the administrative channel, and then through the contentious channel.

[*Latin ed. p. 677*]

NEAPOLITANA 677 instituted a formal legal proceeding before lay judges, but with an unfavorable outcome, because the judgment of the first instance was contrary to its petition, since it was recognized that the title of the archiconfraternity had been validly conferred by the competent authority, and that it necessarily carried precedence with it. The judges of the second instance have not yet rendered a judgment. In the meantime, in order to eliminate all scandal, the Archbishop again petitioned the Secretary of Briefs to obtain the granting of the title, which had already been requested, on the condition that, as expressly stated in the Rescript, the right of precedence should be alternated every two years between the two Archiconfraternities, under penalty of incurring an interdict if such a law were violated. However, a Brief of concession was obtained, although, contrary to the wishes of the Most Holy Father, this clause was inserted.

A synoptic consideration: It was noted that, with regard to the merits of the case, the disposition of the Council of Trent, in Session 25, De Regulis, chapter 13, should be kept in mind, which reads as follows: "All controversies concerning precedence, which often give rise to great scandal among ecclesiastical persons, both secular and regular, whether in public processions or in those that take place in the burial of the dead, and in carrying the umbrella and other similar things, the Bishop, setting aside all appellations and without any impediment, shall settle." Therefore, it seems that the Ordinary, in this case, responded to the intention of the Council of Trent by proposing a path of conciliation, avoiding the ambiguities and expenses of a trial.

On the contrary, the confreres of the Most Holy Rosary do not favor this concord, since they believe that, having already been granted the title of Archiconfraternity, they possess the right of precedence over all other confraternities. However, there appear to be obstacles of considerable weight to this intention. For, in the first place, the very Rescript of concession could be called into question, since it suffers from a flaw of surreptitiousness. The Archbishop confesses that he...

[*Latin ed. p. 678*]

678 In Naples, it has been alleged that a certain impediment does not obstruct the granting of grace; however, on the contrary, there are many, and indeed very serious, arguments that do obstruct it, as the outcome

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clearly demonstrates. Furthermore, even if a valid title is granted, it does not necessarily follow that a prior right exists. Indeed, the Constitution of Gregory XIII, *Exposcit*, establishes two titles for claiming a prior right: namely, the peaceful exercise of a right, or quasi-possession; and the title of the older foundation. Hence, the Sacred Congregation of Rites has always adhered to these principles, as is evidenced by the following statements from Ferrari, *Bibliotheca Canonica*, Volume V, Article VI, paragraphs 15 and following: "Lay confraternities must proceed and precede each other within themselves according to the Bull of Gregory XIII, *Exposcit*. Thus, the Sacred Congregation of Rites declared in Nepeta on March 10, 1608, and in Thelesina on March 19, 1611: 'Therefore, the confraternity that first puts on the sack [habit] must precede the others that put it on later.' The Sacred Congregation of Rites also declared in Sorana on August 7, 1628, and in San Severino on September 24, 1712: 'However, the Confraternity of the Most Holy Sacrament is excepted, to which precedence must be given over all other confraternities in those processions in which the Most Holy Sacrament is carried, as declared by the Sacred Congregation of Rites in Vercelli on June 18, 1695, and in Cremona on August 3, 1697. In other processions, the Confraternity of the Most Holy Sacrament must precede and proceed according to its seniority, just like the others: The Sacred Congregation of Rites declared in Lauden on June 18, 1628, and in *Nullius* on September 3 of the same year.'" Furthermore, De Luca, in *De Praeeminentiis*, Discourse 24, paragraph 4, states: "One [argument] consisted of the Constitution of Gregory XIII, which is regularly the norm for such controversies, namely that the antiquity of the foundation...or introduction into the place must be considered. And the other [argument] concerns custom, to which due consideration must be given in this matter." Indeed, it is established without contradiction that the sodality under the title of Saint Augustine and Saint Monica is far older than the sodality now called the Most Holy Rosary. For this reason, it has always, until this present controversy, preceded the latter.

[*Latin ed. p. 679*]

NEAPOLITANA 679. Indeed, the very sodality, under the title of St. Augustine and St. Monica, confesses that in this city, the following custom prevailed: that if any sodality was established under the title of the Archiconfraternity, it would immediately precede all others, even though it had not previously possessed the legal right to precedence. This custom appears to be based more on a special or customary law, rather than on a common law; for the title of the Archiconfraternity seems to refer more to other sodalities of the same kind, and to establish a leading or superior rank among them; and this title does not seem to be such that it would confer absolute precedence and a higher rank before all other sodalities, even of a different kind and nature. In truth, it is established by canon law

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that the sodality called "of the Most Holy Sacrament" must precede all other sodalities and Archiconfraternities in processions held in honor of the Body of the Lord. Therefore, it is not established by law that the title of the Archiconfraternity absolutely claims precedence in terms of establishment, or peaceful possession of the right of precedence, with respect to all other simple confraternities, even of a different kind. In the present action, the intention of the Court, and also of the plaintiff, is to compel the sodality of Aversa, having made an agreement with the Most Reverend [Cardinal], to exercise the right of alternating precedence. However, the question itself appears to be of a broader nature, and therefore the formula of the doubt was formulated somewhat more generally. With these considerations in mind, the purpose was to resolve the doubt as to whether and how the right of precedence should be held by the confreres of the Most Holy Rosary, before the confraternity, in this case. RESOLUTION. The Sacred Congregation of Rites, after deliberation on January 23, 1897, decided to respond: "To proceed according to the opinion of the Most Reverend Archbishop." Therefore, it is clear that the exercise of the right of precedence should be alternating between two sodalities, as proposed by the Most Reverend Ordinary (1). (1) Recole Vol. XXIII, 131, Acermen. on precedence.

[*Latin ed. p. 680*]

680 CIRCULAR LETTERS of the Sacred Congregation of the Council for Southern Affairs, concerning the governance of seminaries, addressed to the Ordinaries of America. Regarding the seminaries of clerics, the Council of Trent, in Session XXIII, Chapter XXIII, on Reform, having prescribed several things pertaining to the admission of students and to their religious and literary education, adds: "All these things, and others that are opportune and necessary for this matter, each Bishop shall establish, with the counsel of two canons, who are senior and more learned, whom he himself shall choose, as the Holy Spirit may suggest; and he will endeavor that these be always observed, by frequently visiting the institution." Proceeding then to matters concerning economic administration, it decrees that "the same Bishops, with the counsel of two from the chapter, one chosen by the Bishop, the other by the chapter itself; and also of two from the clergy of the city, of whom one is chosen in a similar manner by the Bishop, and the other by the clergy," shall provide for all things pertaining to the establishment of the college, to the payment of salaries to teachers and ministers, to the support of the students, and to other expenses. Therefore, the Holy Council commands that a double order of advisors be present in the establishment and governance of seminaries, one for disciplinary matters, the other for temporal administration, distinct in the number of persons, in the manner of election, and in their office; although nothing prevents two canons, who are in the group of advisors for economic matters, from being chosen and appointed by the Bishop himself, also for disciplinary

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matters, provided that the distinction of duties is maintained. All these things, having been so wisely ordered, each person will easily understand how much the prosperous state of a seminary, and the sound formation of clerics, depend on the progress of religion; hence, this double order of advisors, who assist the Bishops in the governance and administration of seminaries, and who support them in so great a responsibility, is nothing less than the most prudent precaution and the most salutary provision. Even more so, because Bishops are often so occupied, either by the visitation of the diocese or by other affairs to which they must necessarily attend, that they are frequently quite unable to devote themselves constantly to the care of their seminaries, and to consult on all matters directly. It cannot be denied that the Ordinaries are hindered in the prompt governance of this pious institution; for it is a received rule that...

[*Latin ed. p. 681*]

CIRCULAR LETTERS 681. The Sacred Congregation of the Council, from the year 1585, and subsequently more than once, has decreed that Bishops are obligated to consult with a council of delegates, but are not bound to follow their advice. Indeed, in Oseen, in the month of October 1585, the Most Holy Congregation judged that "it suffices that the Bishop require such a council, and that, having availed himself of their counsel, the Bishop may decide and deliberate on what he judges to be most expedient according to his prudence." However, merely consulting with a council cannot be an impediment; rather, it serves as a light, a direction, and an aid. Therefore, Bishops should know how important it is, and with what diligence they should strive, that this law, so wisely instituted, be demanded for execution everywhere, and be faithfully observed. If, however, due to a lack of clergy, or due to other serious circumstances in which dioceses of South America are often found, it is not possible to fulfill all of these things, the Ordinary should not allow the entire law to be nullified, nor should the observance of it in those things that are possible be neglected; but rather, they may appropriately turn to the Holy See, which, with its counsel, will assist the Bishops according to the various circumstances of the places and the diversity of cases, and will not fail to apply suitable adjustments to those things that pertain to the *forma*, while preserving the substance of the law. Nevertheless, every effort should be made to ensure that, if possible, the law prevails in all things, and that nothing is taken away from it; so that both groups of advisors, constituted according to the prescribed *forma*, may fulfill their function according to the law. What the *forma* of election should be when establishing delegates is clearly evident from the text of the Council attached. It is also clearly known in which matters the opinion of the advisors should be sought; namely, in all those matters that pertain both to the discipline and education of the clergy, and to the administration of the

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temporal affairs of the pious house. Therefore, the Sacred Congregation of the Council, in Oseen, in the year 1585, as stated above, declared, "that the Bishop is to be provided with the counsel of the delegates both concerning the institution, discipline, and morals of the clergy, as well as concerning the administration of temporal affairs... but that the collection made for the seminary pertains only to the Bishop." And in Salerno, in the month of July 1589, in the proposed doubts: "II. Whether the counsel of these (namely, the two delegates concerning discipline) should be sought both in establishing general rules for the seminary, as well as in the election of individual students to be admitted, in the election of teachers, and in the selection of books..."

[*Latin ed. p. 682*]

682. Circular letters concerning the governance of seminaries, the confessor, the punishment of the disobedient, expulsion, visitation, and similar matters? "III. Are four others to be appointed, and are they to be used only in the council for the assessment of taxes, contributions, and the fruits of the union of benefices, and in other difficulties which might impede or disturb the instruction or preservation of the seminary; or are they also to be used in the collection and administration of the temporal affairs of said seminary, such as, for example, the appointment or expulsion of ministers and temporal servants, daily expenses, the provision of bread; as well as the goods and revenues of the seminary itself, even from united benefices, such as, for example, leases, concessions, other contracts, and lawsuits?" The response was: "To the first question: In all these matters, they are to be used. To the second: The Bishop should consult with the council of appointed individuals both concerning the institution, discipline, and morals, as well as the administration of temporal affairs. When one of the consultants, appointed for temporal matters, is to be chosen from the clergy, the clergy can exercise their right in a synod, if one is held at that time, as the Doctors teach: otherwise, the election must be carried out in a special assembly of the entire clergy of the diocese. Finally, the office of all those elected should be permanent, and no one should be removed except for a legitimate reason," so decided the Sacred Congregation of Councils in the cited document from Salerno in the year 1589, and this has been confirmed more frequently since. And if one of them ceases from his office due to death, departure, or another just reason, their replacement should be made by those who carried out the previous election. These are the principal heads of canonical discipline by which the institute of the seminary is contained and governed, which, by order of the Most Holy Lord Pope Leo XIII, are brought to the attention of all Ordinaries of South America through these letters of the Sacred Congregation, so that the observance of the most prudent law may be restored where it has become obsolete, and may be introduced for the first time where it has not yet been implemented. Given

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in Rome, from the Sacred Congregation, on the 15th of March, 1897. (1)
A. B. DI PIETRO, Prefect.

ARCHIEPISCOPUS NAZIANZENUS

Prosecretarius.
CARD.
(1) Recole, Vol. XII, 497, and Vol. XXII, 603.

[*Latin ed. p. 683*]

685 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF NERITONEN. DECREE OF EXEMPTION, dated March 26, 1897. SUMMARY OF FACTS. The Bishop of Neritone, in a report concerning the state of his diocese submitted to the Holy See on July 31, 1894, described several inconveniences arising in his diocese from the actions of the Regular clergy. For religious living outside of convents, a certain canonical title is required; however, when the aforementioned Bishop, having discovered a religious residing in a certain parish, inquired about this matter of the Provincial of the Reform Order, he learned that, by concession of the Holy See, the Superior General can derogate from the common rule; hence, it frequently happens that several religious in his diocese remain outside of convents, with only the simple blessing of their Superiors. Furthermore, during a pastoral visitation of the town of Galatone, as an apostolic delegate, he wished to visit the monastery of Saint Peter of Alcantara, where there were fewer than six religious present, but the Provincial prevented him from doing so through open letters, alleging privileges and exemptions. Grave reasons for the visitation were pressing. In such convents suppressed by the Italian Government, and usually guarded by only one or two religious, he found many widespread inconveniences, both concerning the sacred relics conserved in the altars, and concerning the stalls for confessions, and concerning the altar cloths: for these religious are content with only the exterior aspects and neglect the essentials. Finally, the Bishop of Neritone reported that in the aforementioned monastery-novitiate located in Galatone, young men of no education are received; these, after their novitiate and with insufficient study, are sent elsewhere, outside of the diocese, to be received into Orders, and not...

[*Latin ed. p. 684*]

684. It rarely happens that these [religious] return to the diocese as secular priests. He cites, therefore, the actual case of the Guardian of the aforementioned Congregation, who, having been ordained a priest in the year 1828, arrived in the diocese of Orense as a confessor, with the permission of the Archbishop of Taranto. In this diocese, subjected to an examination for the purpose of confession, he was approved, because he possessed a

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certain natural perspicacity, but was found to be a man lacking any instruction. After these things were related by the Bishop of Orense, he proposed two questions, which are referred to below in distinct doubts: He inquired whether the rescript of the Holy Penitentiary of September 12, 1872, which declares that churches and houses of regular canons, containing three in number living together, are exempt from the jurisdiction of the Ordinary, had repealed the Decree of Innocent XI, which requires at least six religious living together for the granting of exemption, and whether it still endures, so that, under no respect, they may be visited by the Ordinary? And secondly, how should the aforementioned inconveniences be addressed, especially when the religious, entrenched in their privileges, refuse to obey the dispositions of the Ordinary? Furthermore, he inquired: Since, according to the decrees of the Holy Roman Congregation for Religious, issued on January 25, 1848, by order of Pope Pius IX, no one may be admitted to the religious habit and profession without certain testimonials, both from the Ordinary of origin and from the Ordinary of the place, which testify to the promotion of good, and since, according to the declaration of the Holy Penitentiary mentioned above concerning the fourth question, all religious are subject to the jurisdiction of the Ordinary of the place with regard to ecclesiastical discipline and governance, how should the Bishops act when the reception into the habit and profession takes place without the aforementioned testimonials, and when, after having received the habit and being ordained priests, they afterwards pass to the secular clergy, without any testimony of a good life or knowledge to commend them? These questions were transmitted for information.

[*Latin ed. p. 685*]

NERITONEN. 685. The following is a vote from the Reverend General Minister of the Order of Friars Minor, who, in a response given on November 10, 1894, expresses himself as being entirely opposed to the Bishop of Neritonen. A Synopsis of the Discussion: The Reverend General Minister first observes that the Decree of the Holy Penitentiary Congregation of September 12, 1872, although it temporarily derogates from common law, nevertheless remains in full force. This Decree is a true benefit for Religious; it was indeed granted out of a certain sense of piety, in order to alleviate, to some extent, the miserable condition of the monastic Orders in Italy, which had been created by new and unjust laws; therefore, it must be interpreted broadly, according to the principle that the benefit of a prince must be understood widely. With this premise, the Reverend Minister adds that it is undoubtedly the case that any subsequent legitimate provision will derogate from a prior one in that which it contradicts it. Thus, the Penitentiary Congregation's provision derogated from common law in establishing a minimum number of religious for their exemption. However, this provision, having never been revoked, must still be considered to be in force.

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This must be maintained all the more strongly, since the principal reason for which the exemption was granted still persists. The reason of the law is the soul of the law. The reason for the exemption induced by the aforementioned Decree was the law suppressing Religious Orders, and this law still exists in its severity. Nor can it be inferred from the fact that, in recent times, some communities have begun to revive, that the principal reason for the exemption has ceased: for, in order for a law to cease, it is necessary that the principal reason completely cease, and in this case, the suppression has not completely ceased, but has only ceased to the extent that the religious have become dispersed. Furthermore, from the spoliation of the exemption for small communities, which are now beginning to reappear in the monastic provinces of Italy, and especially in Sicily, serious consequences will arise: 1. The religious, in all the efforts expended in recovering the convents according to the wishes of the Holy See and the General Superiors, will be deprived of the FAVOR OF THE FRATI MINORI.

[*Latin ed. p. 686*]

686 NERITONEN. They consider this deprivation as a reward. 2. The formal restoration of Regular Provinces would prove impossible, because the Regulars, being subject to the Bishop, would cease to observe their own regular discipline. 3. Not a few provinces, now on the path to restoration, would soon vanish, because the Superiors of the Provinces, irritated by this deprivation of exemption, would care little or nothing for the formal reintegration of their provinces in the future. Then, the Minister General, continuing with the examination of the second proposal made by the Bishop of Neritonen, argues that the Decrees of the Roman Pontiffs and the Regular discipline are not included in the expression "ecclesiastical polity and discipline," in which, according to the dispositions of the Sacred Penitentiary of 1867 and 1872, the Regulars are subject to the Diocesan Bishops. He argues this from the different nature of these dispositions. The dispositions of the Sacred Penitentiary concern only the Regulars suppressed in Italy and the adjacent islands; on the contrary, the Decree of the Roman Pontiffs requires the reception of testimonial letters from the local Ordinaries for admission to religious orders, and is universal; and the Decree on Regular discipline prescribes the manner of reception into the Order and the profession of simple vows, and applies only in Italy and the adjacent islands. Therefore, if the two Decrees of the Roman Pontiffs were to be understood under the name of "ecclesiastical polity and discipline," it would follow absurdly that, since it is prescribed in them that the Regulars observe their Constitutions regarding vesture and the profession of novices, the Ordinaries could oversee the observance of the statutes of any Regular Order, which is prohibited by the Decree of the Sacred Penitentiary of April 18, 1867, n. 2. Hence, just as the reception into the Order, the Novitiate, and the Profession, which constitute essential elements for a religious man, escape the power of the

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Bishops, so the norms governing these acts should not depend on the Bishops themselves, because the accessory follows the principal. Finally, in n. 3 of the Decree of the Roman Pontiffs and in n. 7 of the Decree on Regular discipline, it is stated that the Superiors of the Regulars must answer under a grave precept and under ecclesiastical penalties for the exact observance of these Decrees. Therefore, the Bishops...

[*Latin ed. p. 687*]

NERITONEN. 687 monks who are obligated to obtain testimonial letters for admission to the Order are not bound by any restriction regarding the observance of Decrees in this matter. JURISDICTION OF THE BISHOP OF NERITONEN. — On the contrary, the Bishop of Neritonen, setting aside the discussion regarding the second point, which was mentioned in the facts of the case, insists entirely on the first. He argues that small religious houses are subject to the extraordinary jurisdiction of the Bishops, which is exercised when these Bishops inspect them during pastoral visitations, as delegates of the Holy See, and therefore the dispositions of the Sacred Penitentiary of April 18, 1867, and September 12, 1872, have not derogated from the Constitution *Ut in parvis*, nor from common law. He supports this with the authority of Lucidi *de Visitatione SS. LL.*, vol. 1. First of all, a certain and immutable canon must be established, that all persons and places within the diocese are subject to visitation by the Bishop, unless they possess a manifest exemption. However, the Bishop adds, in the aforementioned dispositions of the Holy Penitentiary, no restriction is placed on the episcopal jurisdiction in pastoral visitations, nor is any new privilege introduced for religious in general, but rather certain means are provided to assist the miserable condition of religious expelled from their own houses. But even if these small houses have enjoyed the controversial exemption, it must be said that this privilege has ceased due to the abuses and scandals that followed. The Bishop states that this is evident from circular letters of the Congregation for the Discipline of Religious, in which, while reproaching abuses, exhortations are also made to religious to unite their houses and no longer remain dispersed. Hence, the disposition under number 3 of the Holy Penitentiary is revoked. This seems all the more to be maintained, because the cause for which the aforementioned exemption was granted has now ceased: for this cause consisted in providing an easier means for reintegrating suppressed houses. Indeed, these houses are now largely restored! New ones are being established every day.

[*Latin ed. p. 688*]

688. NERITONEN. The day dawns, and the novices are present in the house: and the life of the Regulars, which, due to political vicissitudes, was uncertain and precarious, is now made quiet and tranquil. Therefore, the exemption for small monasteries has ceased, and there remains no valid

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reason for denying to the Bishops that which, as the Supreme Pontiff Leo XIII notes in the Bull *Romanos Pontifices* of May 8, 1881, has been granted to them by common law. Finally, the Bishop, having described the inconveniences that would follow if the exemption for small monasteries were to be admitted even today, concludes that the Decree of Innocent, namely *Ut in parvis*, now fully retains its force. Having briefly considered these matters on both sides, the following propositions were put forward for resolution: I. Did the Sacred Penitentiary Congregation, in its response of September 12, 1872, completely abolish the Decree of Innocent X, *Ut in parvis*, with its declarations, so that in no respect can the Ordinary visit the churches and houses where there are not at least six religious of proven life, of whom at least four are priests of mature age? And, as an affirmative answer: II. How should the Bishops act if they are certain and secure that, in some churches and monasteries, concerning which there is mention, not everything proceeds correctly and in order? And, as a negative answer to the first: III. How should the Bishops act if the Religious refuse to obey the dispositions of the Ordinary, claiming privileges and perfect exemption? IV. Should attention be paid to the decrees of Pope Pius IX, *Romani Pontifices* and *Regularis disciplinae*, so that the conscience of the local Ordinaries may be burdened regarding their observance? V. How should the Bishops act if they admit to the habit and profession without any testimonials, either from the Bishop, or at least from the parish priest, or if they do not inquire?

[*Latin ed. p. 689*]

NERITONEN, 689 concerning the birth, age, morals, life, reputation, condition, knowledge, etc., of novices. VI. How ought Bishops to behave, when it often happens that those who have entered without a true vocation and with a lack of proper disposition, after receiving the order of the priesthood, are dismissed, and therefore are not subject to either discipline or moral guidance?

RESOLUTION. The Sacred Congregation of Bishops and Regulars, on March 26, 1897, responded to all those from Vico Equense, with the following: To I. Regarding the places to which the Instructions of the Holy Penitentiary of April 18, 1867, apply, and concerning the present regulations: Affirmative. To II. Sufficient provision is made by the Holy Council of Trent, Session 25, on Regular Canons, chapter 14, if Regulars sin outside the cloister or house: but if they sin within the cloister, the Bishop should warn the Superior Regular, and if the latter does not provide a remedy, recourse should be made to the Sacred Congregation of Bishops and Regulars. Regarding the rest, provision is made in the foregoing.

GADITANA, or SANTANDARIEN. TESTAMENT. On April 2, 1897. SUMMARY OF THE MATTER. Peter of Alcantara of Igareda and Balbas, from the diocese of Santandari in Spain, who departed this life with great praise on March 6, 1883, made the following dispositions in his will, among

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other things:

1. He assigned 50,000 *libellas* (pesetas) for the erection and endowment of two schools for boys and girls in the towns of Santibanez and Correjo.

2. He designated another 50,000 *libellas* (pesetas) for the construction of a marketplace in Cabezón de la Sal, under the condition that the Municipality and the leading citizens would obligate themselves to contribute six out of every hundred of the said sum, in favor of the aforementioned institutions.

3. Finally, he left 500,000 *libellas* to found a hospital for the sick and the elderly.

Acts. Vol. XXIX. Fol. CCCXLVII.

[*Latin ed. p. 690*]

690 OF CADIZ OR SANTANDER. In order that this pious will might be observed with the utmost care, the testator named several testamentary executors, with the right of precedence, who were subsequently revoked in a subsequent codicil; and he ordered them to immediately proceed with the execution of the dispositions. Among these, he mentioned Vincent Calvo and Valero, then Bishop of Santander, and now of Cadiz, who, due to the resignation of others, remains the sole testamentary executor present. Following the example of the brother, the sister, Petra de Igareda and Balbas, by will dated March 7, 1883, bequeathed 120,000 livres for the establishment of a school and hospital in Santibanez or in Cabezón de la Sal, and desired that the same Bishop Calvo and Valero be appointed for their establishment and construction. However, since the execution of the bequests was delayed, the municipal authorities of Cabezón de la Sal presented their complaints first to the Apostolic Nuncio of Spain and then to this Holy Congregation, requesting that Bishop Calvo and Valero be compelled to fulfill their duties as quickly as possible. In his response, the aforementioned Bishop observed that nothing prevented him from carrying out the pious dispositions: the obstacle lay, on the one hand, with the municipal authorities of Cabezón de la Sal, who refused to take into account the interests of pious causes in the construction of a marketplace; and, on the other hand, with the current Bishop of Santander, who denied permission to the Marist Brothers and the Daughters of Charity, to whom the aforementioned schools were to be entrusted, to establish themselves in the aforementioned towns, and indeed demanded the deduction of 30,000 livres from the principal sum of the bequests for the establishment of a chapel, which was neither prescribed by the pious testator, nor seems necessary, since the local parish priests are sufficient for spiritual assistance. The current Bishop of Santander, however, maintained that the establishment of the schools and the presence of the Marist Brothers and the Daughters of Charity in the diocese could not be permitted without the establishment

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of a chapel; furthermore, the principal sum of the bequeathed funds had increased due to accumulated interest to almost double, and the bequests had been executed only in a small part.

[*Latin ed. p. 691*]

691 CADIZ OR SANTANDER. A Synopsis of the Rights of the Municipality of Cabezón de la Sal. — The municipal authorities, having been informed that if the Bishop of Cadiz were not summoned to a secular tribunal, although certain of victory, they would have acted in this way both to avoid scandal and out of a certain respect for episcopal authority, and, above all, because, according to the terms of the will, although no specific time was set for the execution of the bequests, the testamentary executors ought to fulfill their duty as soon as possible. Indeed, the term established by the Spanish Civil Code, article 904, is one year from the acceptance of the office of executor. This point seems more relevant, because a portion of the principal remained partly in money and securities, and partly in wine from Jerez, which Mr. Calvo and Valero quickly sold, so that the money necessary to fulfill the bequests was readily available. Nevertheless, from the death of the testator until the present day, only the school for boys in the town of Cabezón de la Sal has been founded and entrusted to 4 or 5 Sisters of St. Vincent de Paul, and a substantial building has been erected, valued at approximately thirty thousand livres. An old house in the town of Correjo has also been purchased, along with some land for construction: but the total expenses incurred now amount to 60,000 livres, which sum is quite small in comparison to the principal of the estate bequeathed, the bequests themselves, and the relative profits accrued. The municipal authorities do not deny that dispositions made for pious purposes can be altered if legitimate authority so decrees; but it is necessary that serious reasons be present, such as, for example, changed social conditions, the purpose intended by the testator no longer being attainable, an urgent necessity, and others: none of which are present in this case, since the social conditions of the aforementioned towns remain the same, the purpose intended by the testator is still attainable, and there is no necessity to alter the pious will of the testator. Therefore, in this regard, the execution of the bequests should not be delayed.

[*Latin ed. p. 692*]

692 FROM CADIZ OR SANTANDER. Subsequently, the municipal authorities approach the matter specifically concerning the pious bequest of Lady Igareda, noting: 1° That the executors of the will have unanimously agreed to establish a primary preparatory school for girls, named the Igareda and Balbas School, under the direction of a priest appointed by Bishop Vincent Calvo, and under the vigilance and protection of the Bishops of Gadiz and Santander. 2° That, having been informed of this, the

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Bishop of Gadiz summoned the executors of the will and discouraged them from the project. The municipal authorities state that this course of action is extremely dangerous, as it is easily possible that, due to disagreements among the executors of the will, the execution of this pious work will be indefinitely postponed. The municipal authorities of Cabezón de la Sal presented further arguments, which the Bishop of Santander added to. He observes that the Bishop of Gadiz could have utilized the services of lay instructors for the direction of these institutions, and that these, provided they were subject to the legitimate authority of the Bishop of Santander, would be preferable to religious individuals; indeed, he strongly opposes the idea of a religious community, since some of its members would have to travel a long and difficult distance, especially during the winter, (more than a kilometer) to attend Mass in the parish church, and on some days they would not even be able to attend, since the needs of the parish require that Masses be celebrated at different times. But even setting aside this argument, the Bishop of Santander insists on the denial of the establishment of the chaplaincy, because, according to the proposal of the Bishop of Gadiz, the schools would be entrusted to religious individuals, which he considers entirely unreasonable. For on the one hand, there is no lack of resources, since the bequeathed sum exceeds ten million livres, and on the other hand, the creation or establishment of this chaplaincy was not prohibited by the testator. However, in any case, everything could be resolved by appealing to the Holy See. Finally, the Bishop of Santander notes that he has repeatedly invited the Bishop of Gadiz to deposit the bequeathed sum with the Spanish national bank.

[*Latin ed. p. 693*]

GADITAN OR SANTANDERIAN. 693, stating that within two months he would have made the payments for the pious bequests. But the Bishop of Gaditan always stubbornly refused.

RIGHTS OF THE BISHOP OF GADITAN. — On the contrary, the Bishop of Gaditan observes that all the provisions contained in the first 22 clauses of the will, the execution of which depended exclusively on him, have been fulfilled, as can easily be proven by documents. Regarding the others, however, he defends himself as follows. Firstly, with regard to the foundation of schools in the towns of Santibanez and Correjo, he notes that he readily has at his disposal the sum of 50,000 reales. Secondly, that since 1889 he has purchased a suitable building for the schools for girls and the residence of the teachers; he also purchased a property for the erection of a school for boys: all would now be completed, were it not for the insistence of the Bishop of Santander regarding the establishment of a chaplaincy. Similarly, the erection of the hospital had to be delayed because the Bishop of Santander demanded a special designation for a chaplaincy. However, the Bishop of Gaditan adds that for the present, he has provisionally purchased a house

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in which 12 elderly poor people are cared for by the Daughters of Charity. Finally, with regard to the foundation of the marketplace, he observes that the bequest of 50,000 reales is readily available, but the work cannot be completed because the Municipality refuses to provide the prescribed guarantee.

Thus, with regard to the reasons for his actions, the Bishop of Gaditan proceeds to address the specific claim of the Bishop of Santander concerning the allocation of 30,000 reales for the erection of a chaplaincy. He states that ordinaries cannot demand from testamentary executors that which was not prescribed in the will. Indeed, the foundation of a chaplaincy is in no way ordered in the will; therefore, the demand made is unjust. Furthermore, he notes that the distance of the town of Correjo from the parish residence is barely a kilometer; there are analogous institutions in the Diocese of Santander, the distance of which from the parish church is greater, and it is not understandable the specific designation of a chaplaincy for this purpose.

[*Latin ed. p. 694*]

694 OF GADITANIA OR SANTANDER. That is to say, concerning six religious, while in the aforementioned diocese, due to the lack of clergy in many parishes, even a parish priest is lacking. Therefore, the foundation of a chapel was rightly rejected: The Bishop of Gaditania could have generously followed the dispositions of the brothers Igoreda and Balbas, but he deemed it better to propose a method whereby foundations would be established under the vigilance and direction of the religious of the Marist order and the Daughters of Charity. Finally, the Bishop of Gaditania added the following observation. According to the will of Peter de Igoreda, only two schools should be founded, both in the towns of Santibanez and Correjo, one for boys, the other for girls: but in addition to these, the same Bishop founded another school for girls in the town of Cabezón de la Sal, which school is governed by six Daughters of Charity, and to which two hundred and forty students come from Cabezón de la Sal and other towns. However, regarding this school, of which Cabezón de la Sal unjustly enjoys, the Municipality and other detractors of the Bishop of Gaditania are completely and maliciously silent. As for the pious bequest of the Lady Peter Igareda, if it has not yet been put into execution, neither the Bishop of Gaditania nor the other testamentary executors are to be blamed. Not the Bishop of Gaditania, because the sum of 120,000 livres for the erection of a school in Cabezón de la Sal has not yet been delivered to him; not the testamentary executors, because they have already deposited that sum with the treasury of Spain. The entire fault for the delay rests with the present Bishop of Santander, who arbitrarily demands the foundation of a chapel. After discussing both matters, the following question was put to a resolution: How should the Most Reverend Vincent Calvo and Valero,

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Bishop of Gaditania, adhere to the execution of the pious dispositions in this case?

RESOLUTION. The Congregation of Bishops and Regulars, after mature deliberation, responded on April 2, 1897:

[*Latin ed. p. 695*]

GADITAN OR SANTANDER. 695 Affirmative, according to the following conditions: Relate to the testament of the Most Reverend Peter of Alcantara of Igareda and Ralbas. 1. His Excellency, the Most Reverend Calvo and Valero, shall diligently complete the work begun concerning the legacy pertaining to the establishment of a school, both for boys and for girls, in Santibanez and Correjo (article 23), so that both schools may be fully opened during the next academic year. 2. Act without delay with the Municipality of Cabezón de la Sal regarding the determination of the location for the marketplace (as mentioned in article 31). Furthermore, the sum of fifty thousand livres (pesetas), which the testator designated for said marketplace, accumulated since March of the year 1883, shall be converted into interest-bearing capital in favor of the aforementioned schools. 3. Acquire as soon as possible the land in Cabezón de la Sal, upon which the building of the Hospital shall be erected, according to the testator's intention (article 32). Furthermore, whatever sum has been withdrawn since March of the year 1883 from the total of five hundred thousand livres (pesetas), which the testator designated for this purpose, shall be invested in favor of the aforementioned Hospital, specifically for its maintenance, and for the care, both physical and spiritual, of those within it. 4. Establish a fund for two scholarships, commonly called "Bourses d'Étude," and pledge to act in accordance with the testator's will as expressed in article 35. 5. Regarding that which pertains to him concerning the execution of the legacy of the Most Reverend Peter of Alcantara of Igareda and Ralbas, he shall act promptly with the testamentary executors, and diligently apply himself to the task. Furthermore, before the month of September of the current year, he shall inform the Congregation of all that he has done according to what has been stated above, and he shall write to the Bishop of Santander accordingly. The conditions are: The breadth of the task should not prevent the opening of the two schools in Santibanez and Correjo, and it should allow the members, commonly called "Piccoli Maristi" and the Daughters of Charity, to be established in said schools, and it should not insist on the foundation of a chapel, which is neither prescribed in the testament, nor appears to be necessary. So be it.

[*Latin ed. p. 696*]

696 FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS. LETTERS from the Most Reverend Prefects to the Reverend Father General of the Order of Friars Minor concerning the union of

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the four Franciscan Families.

Most Reverend Father, This Sacred Congregation of Bishops and Regular Canons, after having carefully and repeatedly examined in all its parts the well-known question of the union of the four Franciscan Families, which are subject to the governance of the same Reverend General, in its plenary session on Saturday the 10th of the current month, issued a resolution entirely favorable to the plan of union. In the audience subsequently granted to the undersigned Cardinal Prefect, His Holiness deigned fully to approve the judgment of the Sacred Congregation, reserving to Himself the power to issue, in due time, the Pontifical Act, which will make it obligatory, with those precautions and reservations that His enlightened wisdom will deem appropriate. It has been considered fitting to give Your Reverence this prior notice, so that on this delicate matter, all doubt, in which it still remains uncertain, may completely vanish; and also so that you may announce to your Religious, that the new Pontifical ordinance will be worthy, without a doubt, of the wisdom of the Most August Pope.

Most Reverend Father, This Congregation of Bishops and Regular Canons, entrusted with the conduct of affairs, in a full assembly held on Saturday the 10th of this month, after the question of the union of the four Franciscan Families, which are under the jurisdiction of the same Reverend General, had been seriously and repeatedly discussed in every way, in accordance with this plan, having sought the desired union, pronounced its judgment. Subsequently, His Holiness, having granted an audience to the undersigned Cardinal Prefect, benignly and fully approved the judgment of the Sacred Congregation, and will issue, in due time, the Pontifical Act, by which it will be made obligatory; but with those precautions and exceptions that His most illustrious wisdom will deem appropriate. It seemed fitting to warn you of this, Most Reverend Father, so that on this matter, which is quite difficult, all doubt, in which it still remains uncertain, may completely vanish; and also so that you may announce to your Religious, that the new Pontifical rescript will be worthy of the wisdom of the same Most August Pope, and of the special love with which...

[*Latin ed. p. 697*]

697 FROM S. G. E P. AND REGUL, and of the great love with which he is animated towards the illustrious Order of the Seraphic Patriarch of Assisi. Remembering to Your Reverence that the prohibition remains firm for all and each Religious, of whatever rank they may be, to allow commentaries or publications contrary to the aforementioned resolution, I wish you, from God, the greatest prosperity. The illustrious Institute of the Seraphic Patriarch of Assisi progresses, undoubtedly worthy of it. While I signify to you, Reverend Father, that to all and each of the Religious of your Order,

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of whatever rank or dignity, commentaries or any writings whatsoever published by the press, contrary to this judgment, are entirely forbidden, I implore God that He may grant you all the prosperity and the greatest blessings. Most devotedly, in Rome, on the twelfth day of April, in the year 1897. F. S. CARD. Praef. TROMBETTA, Secretary. VANNUTELLI L. LETTERS of the Fathers Franciscan to the Most Eminent Prefect of the S. C. Ep. and Reg. concerning the union of the four Franciscan families. In Rome: from the Monastery of St. Anthony, on the 15th of April, 1897. Eminence, Reverend Father, From the letter sent to the Minister General of the Order of the Friars Minor, we have learned that the Holiness of N. S. Leo XIII, happily reigning, has already deigned to approve the decision given by this Holy Congregation of Bishops and Regulars concerning the union of the four Franciscan families. With this act, the Holy Father seals so many illustrious favors. *Erhe Domine*, From letters recently given by the Minister General of the Order of the Friars Minor, we have learned that the Most Holy Father Leo XIII, happily reigning, has benignly confirmed the judgment pronounced by this Holy Congregation, entrusted with the affairs of Bishops and Regulars, concerning the union to be carried out of the four Franciscan Families. For indeed, with this very act, the Most Holy Father confirms so many...

[*Latin ed. p. 698*]

698 FROM the decree of the Sacred Congregation, extended to our Order, and which grants such great privileges and honors to our Order, bearing His Name, already most glorious, and which, after granting other benefits to the blessed Order, adds a certain complement to the blessed Order, and exhibits His Name, already supremely illustrious, to be inscribed in the annals of the Seraphic Order, so that it may be transmitted to future generations, celebrated in Lodi.

In turn, the Order of the Friars Minor, always subject and obedient to the Holy Roman Church, including the great benefit it receives, with a heart exceedingly grateful and deeply moved, sincerely accepts the confirmation given by His Holiness to the sentence of the Holy Congregation; in all decisions made or to be made, it will demonstrate the unwavering devotion to the Holy See, inherited from the Holy Patriarch; and in the best possible way, it will strive to show itself worthy of the paternal care, which the Supreme Pontiff, amidst so many important affairs, bestows upon the same.

Meanwhile, we undersigned, wishing to express the sentiments of our gratitude for the paternal and singular solicitude of the Holy Father, not only adhere fully to those things which have been granted by the same Holy Father,

[*Latin ed. p. 699*]

With hearts devoted to the decisions made, but knowing that the decrees

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have been reviewed by the Father, we humbly pray that Your Eminence may, with Your own heart, assent; moreover, we earnestly beseech You to be an interpreter before Your Holiness, so that our grateful recognition and filial love, which we and all those who follow Him under the banner of the Poor Man of Assisi, bear towards Him, may be made known. We shall give proof of this: a solemn act of submission, when the Pontifical Bull has been issued, as it is fitting, and completed.

With profound respect, we kiss the hem of the Holy Purple garment, declaring ourselves Your most humble and devoted servants.

[Signatures:]

Fr. Aloysius Parmensis: Minister General of the Order of Friars Minor.

Fr. Raphael Auriliacensis: General Procurator of the same Order.

Fr. Pacificus Vicentinus: General Procurator of the Order of Reformed Friars.

Fr. Athanasius a S. Antonio: General Procurator of the Order of the Brothers of Alcántara and Recollects.

Fr. Petrus Algidensis: General Definitor.

Fr. Seraphinus Bolentinensis: General Definitor.

Fr. Rugerius Verbiest: General Definitor.

Fr. Ignatius e Pago Romano: General Definitor.

Fr. Cyprianus Verdiani: General Definitor.

Fr. Marcellinus Lancianensis: General Definitor.

Fr. Marianus Gimano: General Definitor.

Fr. Anselmus Müller: General Definitor.

Fr. Ioseph Nuceriensis: General Definitor.

Fr. Athanasius Saorgensis: General Definitor.

Fr. Franciscus Rengieo: General Definitor.

Fr. Constantinus Luser: General Definitor.

Fr. Ioannes Maria Santarelli: General Order Scribe.

Fr. Caesarius a Monte love: General Reformed Order Scribe.

Fr. Albertus Baruffi: Scribe of the General Franciscan Mission.

[*Latin ed. p. 700*]

700 FROM THE HOLY CONGREGATION OF RITES, Corisopiten. Concerning the Beatification and Canonization of the Venerable Servant of God, Priest and Missionary, Michael Le Nobletz. Among the outstanding men, endowed with doctrine and religion, who have illuminated the Church of Christ and, like a shield, have defended it from the darts and attacks of the enemy, stands Michael Le Nobletz, priest and missionary, whose apostolic zeal and Christian wisdom repelled the heretical perversity and the Calvinist error from Aramea, and led them to walk in truth and justice before God.

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In the village of Keraudern, in the parish of Plouguerneau and the diocese of Saint-Pol-de-Léon, in Brittany, on September 29th of the year 1577, the Servant of God was born and baptized, having sprung from parents of conspicuous faith and noble lineage, and was strengthened by the patronage and name of the Prince of the Heavenly Host. He was raised in the Catholic faith by a most pious nurse, as if a second mother, and, after reaching the age of seven, he was entrusted to his uncle, and after his uncle's death, he was initiated into the beginnings of the priesthood by his father, and at the age of ten years, he was sent to the town of Ploudaniel to devote himself to the humanities; afterwards, at the age of nineteen, he pursued his studies in Bordeaux. Meanwhile, he experienced the most present help of the Virgin Mary on several occasions, and he repeatedly enjoyed the delights of divine love from heaven. Called to greater graces, he departed for Agen, and made progress in virtue and discipline at the College of the Fathers of the Society of Jesus. While living with certain honest families, the Servant of God is said to have been accused of a shameful fault, but he, being pure in life and free from wickedness, fled to the Most Pure Virgin, taking her as his patron and advocate; and it is said that, through her intercession, he received three graces: of virginity, of doctrine, and of contempt for the world. Having been received among the Marian confreres, he devoted himself to his own perfection and the salvation of others, through which more people adhered to Christ, among whom was the noble man, Peter Quintinus Trecoriensis, who was devoted to military studies, and who later joined the Dominican Family. Returning to Bordeaux, having diligently completed the higher sacred disciplines, the young man obeyed the divine vocation which he had earned through prayers and penances. For, having been tempted by his father and having overcome the conflict, he left his paternal home. There, with the permission of his father, he went to Paris, where

[*Latin ed. p. 701*]

Encouraged by Father Cotton, a man renowned for his wisdom and virtue, he properly received the ecclesiastical orders and the priesthood itself. He prepared himself for the sacred missions in a secluded retreat near the sea at Trémenach, spending an entire year in study, prayer, and works of penance; and in the town of Plouguerneau, I inaugurated the sacred ministry. He went as a missionary to Mont-relax, visited the islands of Uxantem, Molevez, and Bar, and, having established a mission station on the seashore of Saint Matthew, he brought many, with God's help, from a licentious life back to Christian discipline. Afterwards, Michael arrived at Corisopitum and, devoted to the patronage of Saint Corentin, the first Bishop of Corisopitum, he undertook a mission in that city and its surrounding districts and villages, on the western coast of Cornouailles. He resided for twenty-five years in the town of Douarnez, constantly engaged in missions, in which the aforementioned Father Quintinus, a

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priest of the Order of Preachers, was a devoted assistant; he died in the year 1629, a truly pious man. Having left that city, with the blessings of all, Conquesti continued his work until his death, associating with himself the Venerable Father Maunoir, S.J., formerly his disciple, and afterwards his heir and successor in establishing missions according to the rules and spirit of Saint Ignatius, as Michael himself had often foretold to the people, if it pleased God. Finally, the Servant of God, adorned with virtues and a sound mind, being afflicted by a deadly illness and supported by the prayers of the Church, having received the final sacramental absolution from the aforementioned Venerable Father Maunoir, peacefully departed this life on the fifth of May in the year of salvation one thousand six hundred and fifty-two, at the age of seventy-five, in peace with Christ, whose Passion he was then hearing and remembering in the Gospel, and he rested peacefully. The sacred body, as is reported, emitted a wondrous fragrance, and was carried to the chapel of Saint Christopher in the church according to the rites. After the funeral, in the presence of faithful from all orders, who brought with them candles, coins, and linen to the relics of Michael, the same sacred body was buried at Lochristum and, in the year 1701, was transferred to a more honorable tomb; and in the year 1858, it was properly and reverently placed in the new temple of Conquesti. Meanwhile, the sanctity which Michael had attained in life, after his death, became more widely known and spread, and has continued to increase until this time, so that talk has been introduced of initiating the cause for his Beatification. Hence, an adorned Ordinary Procession was held in the Ecclesiastical Court of Corisopitum.

[*Latin ed. p. 702*]

702 FROM THE SACRED CONGREGATION OF RITES, through the reputation of the Servant of God, and as shown in the Acts of the Sacred Congregation of Rites, at the request of the Reverend Father Vincent Ligiez of the Order of Preachers, Postulator of this Cause, His Holiness Pope Leo XIII, having issued decrees on January 26 and March 10, 1894, benignly granted that the question of whether a Commission should be appointed for the introduction of the cause could be proposed and discussed in the ordinary meeting of the Sacred Congregation itself, without the intervention and vote of consultants, even before the lapse of the ten years from the aforementioned exhibition of the ordinary process. And since, from another decree concerning the revision of the writings of the Servant of God, dated February 12, 1896, nothing hindered the proceeding further; at the request of the aforementioned Postulator of the Cause, and after having received insistent letters from several Eminences and Reverend Cardinals of the Holy Roman Church, as well as from many other sacred prelates and other men, whether of ecclesiastical or civil standing, the undersigned Cardinal, Prefect of the Sacred Congregation of Rites and Relator of this

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Cause, in the ordinary meeting of the Sacred Congregation itself, convened at the Vatican Palace on the date indicated below, proposed the following question for discussion: "Whether a Commission should be appointed for the introduction of the cause in this case and for this purpose?" And the Sacred Congregation itself, after the report of the aforementioned Cardinal, having also heard the voice and written opinion of the Reverend Father Gustavo Persiani, exercising the office of Promoter of the Holy Faith, and after mature consideration of all matters, decided to respond: "Affirmatively, that is to say, that the Commission should be appointed if it pleases His Holiness." On April 6, 1897. After all of this was reported to His Holiness Pope Leo XIII by the aforementioned Cardinal, His Holiness, considering the judgment of the Sacred Congregation of Rites to be valid, deigned to sign the Commission for the introduction of the Cause of the Venerable Servant of God Michael Le Nobletz, priest and missionary, on the ninth day of the same month and year.

C. CARD. ALOISI-MASELLA, Prefect.

L. S.

S. D. PANICI, Secretary of the Sacred Congregation.

[*Latin ed. p. 703*]

703 FROM THE SACRED CONGREGATION OF THE HOLY ROMAN CHURCH, THE INQUISITION: A Doubt Regarding Holy Orders. A religious priest humbly implores Your Holiness to resolve a doubt, with which he has long been troubled concerning the validity of his own ordination to the priesthood. For, when handling the instruments, the chalice was not touched by the index and middle fingers, but the index finger and thumb first touched the cup of the chalice; and when the Bishop subsequently pronounced the formula, he touched only the paten, upon which the host was placed, over the chalice. Therefore, since not everything proceeded according to the prescriptions of the Pontifical and the opinion of theologians, and for the tranquility of his conscience, the petitioner asks what should be said concerning the validity of his ordination. Thursday, March 17, 1897. In the General Congregation of the Holy Roman Church and the Inquisition, held by the Most Eminent and Reverend Cardinals, as General Inquisitors in the Christian Republic, with the aforementioned doubt presented, and after the vote of the Most Reverend Consultors, the same Most Eminent and Reverend Lords ordered that a response be given: The petitioner should acquiesce. On the following day, and on Friday, after a report was made to His Holiness, Pope Leo XIII, of blessed memory, during his customary audience, and after it was presented to the Reverend Father Assessor, His Holiness approved the resolution of the Fathers. I, CANON MANCINI, Notary of the Holy Roman Church and the Inquisition. A Doubt Regarding Holy Orders. A priest humbly implores Your Holiness to resolve a doubt, with which he is troubled concerning his ordination to the sacred

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priesthood. This doubt arose because, in the handling of the instruments, not everything proceeded according to the prescriptions of the Pontifical; for, when the petitioner touched the paten with the host placed upon it, he was unable to touch the chalice, although he attempted to do so with his finger. Thursday, March 17, 1897. In the General Congregation of the Holy Roman Church and the Inquisition, held by the Most Eminent and Reverend Cardinals, as General Inquisitors in matters of faith, with the aforementioned doubt presented, and after the vote of the Most Reverend Consultors, the same Most Eminent and Reverend Lords ordered that a response be given: The petitioner should acquiesce.

[*Latin ed. p. 704*]

704 FROM THE SACRED CONGREGATION OF THE INQUISITION. The following day, and on the feria, after a report concerning the aforementioned matters was made to His Holiness, Pope Leo XIII, Divine Providence, during his customary audience, to the Reverend Father, the Assessor, S. O., His Holiness approved the resolution of the Eminent Fathers. I, Canon Mancini, Royal and Pontifical Notary. DOUBT concerning Holy Orders. A priest humbly requests a resolution to the following doubt: For, when he was promoted to the order of the priesthood, and four or five were present to promote him, and all together made an effort to touch the instruments, he remembers that he touched them; however, while the formula was being pronounced, he was unable to touch them, being hindered by the hands of others; hence, he is tormented by anxiety concerning the validity of his own ordination. Feria IV, March 17, 1897. In the General Congregation of the Holy Roman Church and the Universal Inquisition, held before the Eminent and Reverend Cardinals, General Inquisitors in matters of faith, concerning the aforementioned doubt, and after hearing the vote of the Reverend Consultors, the same Eminent and Reverend Lords ordered that a response be given: Let the petitioner be satisfied. The following day, and on the feria, after a report concerning the aforementioned matters was made to His Holiness, Pope Leo XIII, Divine Providence, during his customary audience, to the Reverend Father, the Assessor, S. O., His Holiness approved the resolution of the Eminent Fathers. I, Canon Mancini, Royal and Pontifical Notary. DOUBT concerning artificial fecundation. Feria IV, March 17, 1897. In the General Congregation of the Holy Roman Church and the Universal Inquisition, held before the Eminent and Reverend Cardinals, General Inquisitors against heretical perversity, concerning the following doubt: Can artificial fecundation of a woman be used? After a most diligent examination of all things, and after hearing the vote of the Reverend Consultors, the same Eminent Cardinals ordered that a response be given: It is not permitted. On Feria V I, March 26 of the same month and year, after a careful report concerning the aforementioned matters was made to His Most Holy Father, Pope Leo XIII, His Holiness approved and

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confirmed the resolution of the Eminent Fathers. I, Canon Mancini, Royal and Pontifical Notary.

[*Latin ed. p. 705*]

705 FROM THE HOLY CONGREGATION OF THE COUNCIL OF BARCELONA, ON MARRIAGE. February 20, 1897. SUMMARY OF THE CASE. Bonaventura and Maria Carmela, of the Diocese of Barcelona, with hearts and minds dissimilar, celebrated their marriage before the Church on August 1, 1850, imprudently urged on by their own parents, who, forgetting that "the marriage contract must be entirely free, both in terms of its meaning, and also in terms of the obligation that is contained within that contract" (St. Bonaventure, 4, dist. 29, art. 1), prepared an unhappy outcome for their children's marriage. Indeed, lacking true or rational love, "by which there is a bond of friendship and companionship among men, which, insofar as it is within its power, tends towards indissolubility" (ibid.), the bond between the spouses, especially in Maria Carmela, was deficient, and the bond of peace and unity in their conjugal life was broken. And because, according to the well-known principle of St. Augustine, the disagreement of spouses is the disturbance of the entire household, scarcely fifty-two days had elapsed since the beginning of the marriage when there were and had been so many and such great discordances in the spouses' home, that the woman, having left her husband, returned to her father's house, and the husband, having been dismissed, did not wish to take her up again under any agreement, nor did she wish to return to their conjugal home. Indeed, desiring to obtain a declaration of the nullity of the marriage, or at least a perpetual separation, she declared to the Judge of the Curia of Barcelona that the husband, to whom she had always stubbornly and violently denied the marital debt, was impotent. The Judge, having heard the spouses and those defending the validity of the marriage, on December 3, 1852, rejected the woman's petition, considering that the alleged nullity should not be examined, and ordered her to reconcile with her husband. But in vain, for although the sentence was confirmed, see the Acts, Vol. XXIX, page CCCXLVIII, 45.

[*Latin ed. p. 706*]

706. BARCELONA. Before the Metropolitan Tribunal, or in the Sacred Roman Rota at Matritensi, the woman persisted in her obstinacy, and, after already forty-four years!, she still remains so. The unfortunate man, on account of the unjust tenacity of the woman and the calumnious imputation of impotence, with his heart and soul broken, fell into the trap of the devil, and completed an adulterous union with the woman, from which he had six children. Finally, repentant for his actions, and desiring to provide for his own conscience and for the legitimization of his children, he urgently requested a dispensation from the valid but unconsummated marriage.

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A SYNOPTIC DISCUSSION: THE OPINION OF THE THEOLOGIAN.

Regarding the matter of impotence, few things need to be said. Indeed, "according to canonical sanctions and the dictates of nature, those who are of a frigid nature, and are impotent, are not found to be at all suitable for contracting marriage" (Sixtus V, C. Cum frequenter): which, indeed, has no place in the present case. For from being to having, the consequence holds: if a man has had intercourse with another woman, resulting in six children, then he was not frigid, but rather potent, and suitable for marriage. And even if this had not been proven, the principle of presumption would hold: every man, after the age of legitimacy, is presumed by law to be potent, unless the contrary is proven; all the more so if experts have testified to the perfect structure of his parts, as in the present case. Indeed, in such circumstances, Doctors hold that intimate knowledge is not necessary, and the woman should be dismissed immediately and without any process. Therefore, an inquiry into the man's alleged impotence in the year 1850, brought about by the woman, would be futile, and has not been proven. Therefore, the matter to be addressed is the lack of consummation, and the reasons sufficient for a dispensation. To which, since the testimonies of witnesses are more valuable than doctrinal expositions, and given also the economic conditions of the present case, briefly, what can be said about the facts regarding potency. Hence, omitting other things, he says:

[*Latin ed. p. 707*]

BARCINONEN. 707 Consultor: A man testified under oath: that both sets of parents had arranged this marriage, to which the woman was not drawn by any affection; and although I did this to please my mother, I gave my sincere and free consent. After the marriage began, I made many attempts to consummate it, but I was always rejected by the woman. The woman testified that she had never had any affection or connection with her husband; and although we shared the same bed, and her husband desired consummation, she never allowed it, not only because of her aversion to the act itself, but also because of her aversion to her husband. The testimony of seven witnesses, consisting of twenty-nine individuals, clearly confirms the truthfulness of the spouses in denying consummation: indeed, twelve explicitly testified to the lack of consummation, while the others testified to the truthfulness of the spouses, all under oath. We therefore have the sworn confession of the spouses that they have never known each other; we have the sworn testimony of seven witnesses confirming the truthfulness of the spouses; we have witnesses who not only recount what they have heard from others, but also testify to what they have heard from the spouses themselves, and that too in a manner and at a time that is not suspicious: all of which is sufficient to prove the truth of the lack of consummation. The presumption to the contrary, based on cohabitation, does not stand, as it is a presumption of law, and this presumption is excluded by

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valid arguments and evidence. This is confirmed in chapter "Laudabilem de frig. et malef." where Celestine III states: "But if both confess, under oath and with the testimony of seven witnesses of relatives or neighbors of good reputation (if relatives are lacking), that they have never had relations with each other, and that they have never become 'one flesh' through carnal intercourse, then it seems that the woman is able to enter into a second marriage." Therefore, Ursaya rightly states (Discep. Eccles, vol. 2, p. 1, disputation 3, no. 45): "The cohabitation of spouses does not cause the marriage to lose its quality and denomination as a sacrament, when..."

[*Latin ed. p. 708*]

708 BARCINONEN. There was no consummation. Therefore, precisely because such a consummation has not occurred, it is always true that the marriage is simply valid, whether the spouses have cohabited and had relations, or whether they have not. Furthermore, the exclusion of consummation is most likely when there is a proven aversion between the spouses, even if one of the spouses desires the act. Moreover, this aversion is considered certain based on the testimony of seven witnesses, confirming the deposition of the spouses. In the case in question, there was a failure to examine the woman according to the prescriptions of Benedict XIV and the Instructions of the Sacred Congregation of the Council, dated August 20, 1840. But such an examination becomes morally impossible due to the stubborn and contumacious reluctance of the bride: the consent of a stubborn woman is not to be expected. Indeed, she refused to submit to an examination by experts, and before the judge, and after two summonses, duly made according to canon law, before the conclusion of the proceedings. Such a defect, especially given the certainty of the man's potency, should be considered of considerable importance, but given all the circumstances of the case, it does not exclude the granting of a dispensation. For the examination of the woman's body is merely an evidentiary means, which by itself is not sufficient; the sworn testimony of the spouses and the deposition of seven witnesses are essential and have true probative force. And even in this matter, the charity and benevolence of the Holy Mother Church are remarkable, which, in cases of serious necessity, has often relaxed the force of the canonical prescriptions regarding the examination: "Sometimes it is permissible to relax the bonds of the law, provided that a just cause is present," (Council of Trent, Session 25, Chapter 18, on Reforms), as we know has been done many times by the Sacred Congregation of the Council, so that, namely, the corruption or obstinacy of the woman would not deprive the man of the right to marry another, or so that the grace of a pontifical dispensation would not be denied to a marriage not consummated for the same purpose. In chapter "Laudabilem," in order to prove virginity, the simultaneous testimony of seven relatives and an examination by midwives is not prescribed, but it is expressly stated that the confession of the

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spouses, along with the testimony of seven relatives, is sufficient; Ursaya, Discip. Eccl. vol. 3, disc. 21.

[*Latin ed. p. 709*]

BARCINONEN. 709 n. 138. Hoc valet non solum ad probandam virginitatem mulieris et impotentiam viri (nam non rarum est casus in quo, in causis impotentiae ex parte viri, inspectio ipsius viri omittitur, et tamen dispensatio conceditur a rato non consummato), sed, *a fortiori*, ad excludendam consummationem, quando inspectio mulieris fieri non potest, vel si ea certo inutilis et consequenter inhonesta esset. Quapropter Sánchez, VIII, 108, 6, loquens de impotentia, dicit: « Et quamvis utroque coniuge fatente impedimentum, et triennio transacto, sanum consilium sit coniuges inspici: at id non est necessarium. Quod in cap. 1 Laudabilem, in ultimo casu ubi est sermo de hoc, de frigiditate et malefactionibus, id non petatur. Deinde ne viduis denegetur hoc remedium, utpote quae per aspectum probare nequeunt matrimonium non esse consummatum ». Atqui huiusmodi rationes plurimum valent ad praesentem causam benigne concedendam: mulier enim obstinate recusans inspectionem, de facto aequiparatur viduae et corruptae, imo saepe saepius de impotentia suspecta dici potest. Et si, docente Coscio, 1, 7, 236, multo magis attendenda esse videtur confessio de non consummatione eorum coniugum, qui propter antipathiam a carnali inter se copula abstinuisse iuraverint; maximi facienda mulieris depositio de propria invincibili aversione erga actum carnale et viri personam. Ceterum si in iudiciis circa impotentiam, quando urgentissimae concurrunt circumstantiae, quae consummationem excludant, saepe omissa inspectione, causa soluta est per dispensationem ad cautelam, nihil prohibet quominus, datis numero et valore depositionum, seu probationum, praesens causa solvi possit per dispensationem, omissa etiam mulieris inspectione; quae inspectio, ut patet, impossibilis existit, data obstinata uxoris reluctantia. Porro talia in casu habemus indicia inconsummationis, quae prudentem in contrarium suspicionem excludant. Et maximi momenti habenda est declaratio utriusque coniugis tempore non suspecto, seu anni 1850-1852, consummationem.

[*Latin ed. p. 710*]

710. BARCINONEN. EXCLUDING. Seeing that at that time the husband most earnestly requested the judge that the wife return to the conjugal home and cease her constant denial; the wife, on the contrary, fostering great aversion and antipathy towards her husband, indeed confirmed the lack of consummation, but declared that the husband was the cause of the lack of consummation, and moreover, she did not hesitate to present him as impotent. However, these two declarations, made with such circumstances, and on the part of the husband made at that time against himself,

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completely exclude any collusion between the spouses. If consummation had taken place, the husband, who was pursuing his own right, and who bravely rejected the accusation of impotence made by the wife out of hatred, would not have admitted the lack of consummation in any way, and, having abandoned the pretense of the wife's denial of the debt, would have spoken only of her return to the conjugal home and of the falsity of the impotence. Therefore, as taught by Ursay, *Discip.*, vol. 3, disp. 21: "When one does not insist with the judge for the resolution of the marriage through the way of justice, that rigor of proofs which is required by law does not need to be present, but the judge can also be moved by extrajudicial proofs"; and as testified by Clericati, *De Sacr. Matr.*, decision 15, no. 36, "formerly, dispensations from a marriage not consummated were often granted in the penitential court, even when urgent proofs of the lack of consummation were not required, because there was no instituted process of actions there, and the sworn deposition of the petitioner alone was sufficient"; it is now clear that in the present case, everything is present, indeed, abundantly present, that is required to establish moral certainty of the lack of consummation. Indeed, the sworn depositions of the spouses are confirmed by twenty-eight witnesses, of whom twelve expressly testified about the lack of consummation, while the others testified about the credibility and veracity of the spouses. It cannot be objected that the ancient declarations of the spouses, which are held in this case of such importance, are not properly judicial, because they were made in a process for reconciliation and not for a dispensation from a marriage not consummated, for in the first place, such declarations were made in a canonical court, and given.

[*Latin ed. p. 711*]

BARCINONEN. 711. Etiam, quod, pro causa praesenti, quasi extrajudiciales dicantur, valent quae cum Ursaya diximus, et iudicialiter confirmantur in capite inconsummationis ex depositionibus ipsorum sponsorum et testium in praesenti iudicio. Causae ad dispensationem sufficientes multiplici ex capite habentur in casu. Siquidem I existit inter coniuges odium implacabile, praesertim ex parte sponsae: unde sponsi facti sunt vel semper fuere heterogenei, et non immerito, elapsis 44 annis ab initis nuptiis, dispensationem ambo desiderant. Atqui causa haec vere canonica habetur, iuxta illud Clericati de Sacr. decis. 15, n. 17: « Septima (causa) est, si coniuges essent inter se heterogenei, id est discordes animo, et ad invicem peterent dissolutionem rati matrimonii, ob eorum quietem ac pacem ». I I. Habetur etiam voluntaria et nimis protracta alterius coniugis dilatio ad reddendum debitum; et hoc multiplici de ratione constituit causam canonicam, ut patet, a fortiori in casu praesenti ob denegationem debiti per annos 44 perdurantem. III. Habemus insuper non solum timorem magni scandali futuri sed scandalum existens reparandum; post initum scilicet matrimonium, sponsus a propria muliere iniuste derelictis, cum muliere soluta car-

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naliter vixit et plurimos ex hoc adulterino commercio filios procreavit: et in talibus adiunctis ex sententia Doctorum quasi duplex causa canonica habetur, alia ratione scandali ex separatione, alia ex capite concubinatus. o o 0. Duas sibi proposuit Consultor quaestiones, scilicet: 1. An constet de matrimonii rati inter sponsos non consummatione? 2. An sit consulendum SSmo super dispensatione matrimonii rati et non consummati? priusquam theses, propriam-exprimentes sententiam proponeret, principia et fundamenta quibus illas fulciendas esse putavit, praemisit, eo fine, ut unico possit intuitu de voti sui probabilitate iudicari, quin opus sit cuilibet ex postea adductis probationibus suum proprium et iuridicum fulcimentum applicare. VOTUM CANONISTAE.

[*Latin ed. p. 712*]

712 BARCELONA. Although the Glossa warns that, in matrimonial causes, great caution must be exercised for the sake of souls (in cap. fin. De Frig. et male f.), and this Holy Congregation commands that proofs be gathered with the utmost care, so that judges may safely rest in rendering their judgment (Instr. Cum moneat Glossa, 22 August 1840), nevertheless, these precautions or proofs are not so weighty and exaggerated that they should generate metaphysical or physical certainty in the mind of the judge. We are dealing with a matter of morals; therefore, we must be content with the certainty that is proper to that sphere, namely, moral certainty. This certainty, however, is regulated according to the laws of human prudence. The ecclesiastical judge, to whom this Holy Congregation entrusts the examination of the matrimonial cause, is bound by obedience and under penalty of nullity to strictly observe the manner and form prescribed in the aforementioned Instruction (Instr. Cum moneat Glossa, 22 August 1840), and therefore must diligently inquire into all the proofs that are prescribed therein, namely, the statements of the parties, the depositions of witnesses, and the ocular inspection of both parties by physicians and midwives. But when both spouses jointly deny consummation, along with an oath, and other concurring circumstances, arguments, and supplementary proofs, it is not necessary, for the purpose of complete proof, to subject the woman to such an inspection of the body, as is the opinion of Alex. de Nevo, Angel. Gutiérrez, Ursaya, Esperell, (Cosci, lib. 3, cap. 2, n. 157), following a marginal note in Cap. Proposuisti 4 verb. Puella de Probat. For the text in the aforementioned chapter speaks of a case of contradiction, where the woman denies and the man affirms consummation, and no right is found to order this inspection, provided that both spouses confess, as the aforementioned authors also point out. Furthermore, according to the opinion of the Holy Fathers and theologians, as well as jurists and

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professors of medicine, the judgment of a midwife is fallible, and is not...

[*Latin ed. p. 713*]

BARCELONA. It can be ascertained, whether a woman is a virgin or has been corrupted, Kosso, ibid., no. 159. Canonists teach that antipathy and the insuperable repugnance and aversion of the bride and groom are one and the same thing, and that these are reasons for a dispensation from a marriage that is valid but not consummated, and that they are also one of the strongest arguments for proving the non-consummation of the marriage. Furthermore, authors demonstrate that this dispensation, due to antipathy, has been granted in other cases, even without consummation, by citing the examples of Carol of Lucca and Ursaya, who testified that Clement X, Benedict XIV, and Clement XIV granted such dispensations for this reason. (See Kosso, ibid., nos. 242, 243, and 245). The case presented by Benedict XIV is very similar to ours. See there. The sworn confession of the spouses regarding the non-consummation due to antipathy seems more reliable, even if they are powerful, than the same confession of spouses who suffer from impotence due to a defect of frigidity. For the frigid and the impotent often and repeatedly knock at the door of the virginal chamber, and doubts often arise concerning their efforts, whether they have in any way penetrated the woman and shed their seed, and therefore they cannot be certain of the effect, that is, of the non-consummation, just as they are not certain of the cause, which is their own impotence, as Sperell observes. (Decisions, 141, no. 8, vol. 2). But on the contrary, when spouses, due to mutual antipathy and hatred, have never been near each other in that state which consummation necessarily requires, all pretext for doubt completely ceases, because they cannot be deceived or misled, since consummation is impossible without suitable and proportionate means, as Theichmejer states in stronger terms, Institutes of Media Law, chapter 4, § Fourth (Kosso, ibid., nos. 245, 246, and 247). Among the conjectures by which the spouses' confession of non-consummation due to antipathy can be further corroborated,

[*Latin ed. p. 714*]

714. BARCINONEN. This appears to be the case when, due to circumstances, a marriage is scarcely contracted, and it subsequently becomes clear that, after the beginning of the marriage, one or the other of the spouses immediately manifests a vehement antipathy and aversion towards the other; for, as long patience harms him who remains silent for a long time (chap. 1, on frigidity and malice), so too, the timely manifestation of antipathy strengthens even doubtful proofs and presumptions, as the same text states: "But if, within the first month or two, after the marriage, he or she declares to the Bishop or his representative, and it can be proven by sound judgment, they may be separated, and that one, if they wish, may

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marry in the Lord." Cosci, ibid., nos. 248, 249, and 250. Furthermore, the confession of the spouses and the lack of consummation are strengthened if, after the timely manifestation of natural antipathy, scarcely at the beginning of the marriage, and after the first or a few subsequent nights, one or the other of them, to their parents, to the household staff, to a physician, to a confessor, or to other priests, steadfastly declares the truth about the lack of consummation for the aforementioned reason; and although witnesses may be found who are unreliable, such as parents or other household members, nevertheless, in the absence of other means of proof, their testimony should be considered. Cosci, nos. 252 and 253. A strong presumption is also provided by the public and common voice regarding the lack of consummation, both immediately after the marriage among all the household members, and successively throughout the entire Oppido or city. Furthermore, Chapter II on Presumptions states: "A strong presumption is manifested by the fame that agrees with the testimony." Cosci, ibid., no. 254. Therefore, when the confession of the spouses is present, especially if it is repeated with an oath, as well as with the oath of the seventh hand, with the testimony of a midwife, with the public voice and reputation, and with other supporting evidence and arguments, nothing seems to stand in the way of the power of the spouses, for there is not a small distance between power and effect; and the cohabitation, which only induces a presumption and not proof, must certainly yield to the truth.

[*Latin ed. p. 715*]

BARCINONEN. 715, must. Cardinal de Luca, Marc, Ursaya. See Cosci, ibid., nos. 256 and 257. With these premises, the Consultant stated that the marriage in question was not consummated. The truth of this proposition can be demonstrated with ease through the means of proof prescribed to us by law, when dealing with matrimonial causes. And first, it is proven by the sworn confession of the spouses. The bride added: "I will continue to say this, and I feel burdened by the weight of my conscience, because I have failed in the duties of a wife by denying the marital act, to which I clearly felt a strong aversion." The sworn depositions of seven witnesses, both from the husband's and the wife's side, demonstrate the piety and veracity of both spouses, when they affirm the lack of consummation of the marriage. A doctor, one of the witnesses, stated: "Mariam was not subject to any impediment that would prevent the consummation of the marriage; nevertheless, the marriage was truly not consummated." Of the seventeen witnesses, namely fourteen who gave sworn depositions and three others, not one can be found who would attest to the consummation. On the contrary, five of them, except for those who plead their ignorance, either because they were absent from the scene of events or because of the tender age of the spouses at the time of the marriage, assert that they have heard from many that

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the marriage between the spouses Bonaventura and Mariam, of which we are speaking, was never consummated. From these numerous testimonies regarding the lack of consummation of the marriage, it is clearly evident that a reputation has arisen, and that this reputation possesses those conditions by which a reputation must be instructed to prove itself, as the Canonists teach. These conditions are: 1. That the reputation be uniform, solid, constant, and perpetual; and not vague, light, or contradictory, or shaken by contradictory allegations; 2. That the reputation originated from honest and trustworthy persons, cap. Quater et quando, 24 de Accusat, and similar cases; 3. That

[*Latin ed. p. 716*]

716. In Barcelona, it must be established, or legitimately proven by witnesses, that the rumor originated from probable causes, which could lead the people to believe and say this; otherwise, it would not be a rumor, but a mere empty noise of the people, which should not be heeded, I. Decurionum filii, Cod. de Poenis. See Reiffenstuel, Lib. 2, Tit. 20, n. 393. Finally, the Consultor stated: When a marriage remains unconsummated within the marriage bed, it is fitting that a pontifical dispensation be granted; and there are many reasons for this, such as the legitimization of offspring and the impossibility of restoring conjugal life.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE FROM THE OFFICE. Bonaventure and Mary Carmel entered into marriage with each other on August 1st of the year 1850, he being then 22 years of age, and she being 20 years of age. After the marriage, Mary was brought to the home of her husband and remained there until September 22nd of the following year, on which day she returned to her father's house, and afterwards did not resume her marital rights. Indeed, when Bonaventure urged her to return, on May 5th, 1851, Mary brought her husband before the ecclesiastical court of Barcelona, claiming that he was incapable of conjugal intercourse. However, Mary fought against this with entirely wrongful intentions. The ecclesiastical court of Barcelona rejected the petition for divorce on December 6th, 1851, and the petition for the nullity of the marriage on December 3rd, 1852. Nor did Mary fare any better when she appealed to the metropolitan judge. For he upheld the sentence of the suffragan. And finally, in the year 1882, the Rota in Madrid, to which Mary had appealed, declared the appeal to be invalid and dismissed. Disregarding the judge's orders, Bonaventure fell into concubinage with a certain Dolorosa Carbonell, from whom he has had 6 children, three of whom share in her life; and he has been seeking a dispensation to marry her since 1888, as they claim that his marriage with Mary remained

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unconsummated.

[*Latin ed. p. 717*]

BARCELONA. 717. Indeed, Bonaventure faces a difficult matter. For it is stated that the spouses had lain together in the same bed for almost two months, and that Bonaventure, at least to the best of his ability, had striven for the consummation of the marriage. However, the impotence on the part of the husband is ruled out by the existence of six children, as we have said; and as for Mary, she herself testifies: "According to the testimony of the physician, she was not afflicted by any physical impediment to the consummation of the marriage." Given these circumstances, proving the lack of consummation of the marriage without any visible sign in the woman's body, as determined by midwives, is a matter of extreme difficulty. On this matter, Cardinal de Luca, *De Matrimonio*, discourse 9, number 15 (there): "A great difficulty existed for me, because it concerned a widow who had already slept with a man, and therefore I did not see how it could be proven that there was no consummation of the marriage, for although it is not entirely impossible to justify such a case, it seems too difficult, so much so that it is a difficulty that is almost akin to impossibility." These words were spoken so that the Most Eminent Fathers might see whether the arguments presented on the opposing side are of such weight that they can remove that great difficulty, which is almost akin to impossibility. But the mind refuses to linger on these matters for much longer, because I grieve and am greatly distressed to see this controversy lasting for almost forty-seven years, causing such harm to souls. Having considered these points on both sides, the question to be addressed is: Whether it is advisable to consult with the Most Holy Fathers regarding a dispensation from a marriage that is valid but not consummated.

RESOLUTION. The Sacred Congregation, after discussing the matter on February 20, 1897, decided to respond: Affirmatively.

[*Latin ed. p. 718*]

718 C AS ALEN. OPINION GIVEN ON THE 20TH OF FEBRUARY, 1897, BY THE DELEGATE, SESSION 24, CHAPTER 5, CONCERNING MATRIMONIAL RELIGIOUS FOUNDATIONS. SUMMARY OF THE CASE. The parish priest of Rosignano, in the Diocese of Casaleno, reported that the Marchioness Teresa Ricci-Visconti, in her testamentary codicil dated October 14, 1869, which was made public on October 12, 1877, established a solemn endowment, to be celebrated annually on the anniversary of her death, and perpetually; and that two Masses should be celebrated each week, one on the feast of Saint John the Baptist, at the altar of the Holy Cross, in honor of the Most Sacred Heart of Jesus, and the other on Saturday, at the altar of the Blessed Virgin Mary of the Holy Rosary, in honor of the Most Sacred Heart of Mary; she also bequeathed two hundred *lire*, to

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be paid annually to the parish fabric. However, a doubt arose concerning this arrangement, namely, whether the two Masses per week were to be celebrated with the obligation of application. To clarify this doubt, several circumstances accompanying the Marchioness's endowment were considered. It was noted that the Marchioness, each year, during the harvest season, gave to the pastor two hundred and fifty *lire*, to be spent at her own discretion; that the pious woman desired the establishment of Sodalities of the Most Sacred Hearts of Jesus and Mary, and therefore gave the pastor the charge to purchase images and to arrange for the canonical establishment of these sodalities. The pastor, wishing to fulfill the pious woman's desire, spontaneously began celebrating two Masses, adding certain prayers; and the Marchioness agreed to repay the two hundred and fifty *lire*. After her death, there remained only the fruits of four thousand *lire* in the bonds of two hundred *lire* each; the value of this sum was reduced to 132 *lire*, after deducting expenses and the annual amount for the application to the Masses, which amounted to 104 *lire* each year. The pastor, who was familiar with the pious testatrix, believed that she intended, through this endowment, to secure the devotion to the Sacred Hearts, without the obligation of application for the Masses. Furthermore, while the pious woman was alive, the two hundred and fifty *lire* were used to repair the needs of the parish church, and...

[*Latin ed. p. 719*]

CASALEN. 719 After the institution of the sodality, these Masses were never applied to [the members], as this is the opinion of the witness. A Synopsis of the Discussion: The primary point considered was that the obligation of celebrating Mass should be distinguished from the obligation of applying it. Indeed, in the Sacrifice of the Mass, three benefits are considered: the first is the general benefit, in which all the faithful participate; the second is the special benefit, which the priest receives; and the third is the intermediate benefit, which each priest applies to those for whom he offers the Sacrifice. - Therefore, it does not contradict that a Mass for the repose of the souls, celebrated in black vestments and with the proper rite, can be applied by the priest for the living, as the Holy Congregation of Rites stated on October 13, 1856, in response to the question "Whether it is permissible for priests to use black vestments and to celebrate a Mass for the repose of the souls in order to fulfill the obligation they have undertaken to celebrate for the living," answering "Affirmatively, unless otherwise prescribed by the one who gave the alms." Also, according to the response of the same Holy Congregation on the Commemoration of All the Faithful Departed, a Mass "can also be applied for the living." - Therefore, the request of the law or the petition of a faithful to celebrate a Mass does not necessarily entail the obligation to apply the Mass. Regarding this matter, the Holy Office responded on September 1, 1841, to the question "Whether a priest is obli-

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gated to celebrate for the bride and groom in the celebration of marriages," answering "The priest is not obligated to apply the Mass for the bride and groom, unless he receives an alms from them." And the Holy Congregation of Rites, in response to the question "Whether a priest celebrating Mass at funerals, without receiving a stipend, should apply the sacrifice for the deceased himself, or rather for others requesting it and offering alms," on April 27, 1895, judged that the answer should be "Negatively to the first part; Affirmatively to the second." In this matter, it can be inferred that the pious foundress intended only the celebration of the Mass, and not its application, not only from the details narrated by the speaker, but also from the words of the will; namely, "...in honor of the Most Sacred Heart of Jesus... in honor of the Most Sacred Heart of Mary..."

[*Latin ed. p. 720*]

720 CASALEN. – To those, it does not appear obscure, that the celebration of Masses was requested in order to increase devotion, specifically in veneration of Our Lord Jesus Christ and the Blessed Virgin Mary, rather than directly for the benefit of the soul of the deceased. – Furthermore, as the advocate notes, the legatees returned without having celebrated and applied the total number of Masses. However, in the opposite direction, the principles and ordinary practice of the Sacred Congregation for the Clergy should be considered, as stated by Benedict XIV in *Opera de Sacra Facultate Missae*, book 3, chapter 9, paragraph 2: "The Sacred Congregation's rule is to be understood as applying even to the obligation of applying the Mass to the soul of the founder of a benefice or chaplaincy..." Moreover, it is more likely that he who founded a benefice or chaplaincy and imposed the obligation of celebrating Mass also intended that the same Mass be applied to himself. The well-known resolution of the Sacred Congregation in the case of Tinen is known. – Regarding the application of the Sacrifice, on August 18, 1668, in the *Liber Decretorum*, page 61, the following is stated: "From a testamentary disposition made in ancient times by a pious testator, a certain chaplaincy was found to be established, with the obligation for the chaplain to celebrate Mass at certain times, including Sundays and other festive days, without any declaration as to whose benefit the Sacrifice should be applied. – Therefore, the Bishop of Tinen petitioned the Sacred Congregation to declare whether such a Sacrifice should be applied for the soul of the testator himself, or at the discretion of the chaplain, as had been the practice thus far. – On August 18, 1668, the Sacred Congregation responded that the Sacrifice should be applied for the soul of the testator. Therefore, the Sacred Congregation has always responded in the same manner to similar petitions, as we have shown in writing for the Congregation, dated February 12, 1718, in the case of Ferrariensis, in which the same matter was discussed, and the Sacred Congregation responded in the same manner on March 26 of the same year." In the present case,

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however, because in one context, the testatrix ordered that "a solemn office... be celebrated on the anniversary of my death... and two Masses be said..." it seems possible to presume that she intended to directly benefit her own soul through this bequest. Furthermore, the advocate related other circumstances pertaining to Alice, which...

[*Latin ed. p. 721*]

GASALEN. 721. It seems that, while the Foundress was still alive, the matter was not considered of such great importance; because, in testamentary matters, the most important thing is that the will of the deceased should prevail until the very last breath of life, and therefore it should be deduced from the words of the will, rather than from the meanings of the will expressed outside of the testamentary documents. - However, the reason for an insufficient alms is not entirely conclusive in interpreting the will of the testator: because Benedict XIV states in Instructionem, chapter 1, number 5: "But one is not exempt from the application of the Mass who has received an alms, even one that is less than the diocesan tax." Considering these points, the question arose as to how the doubt should be resolved. RESOLUTION. The Sacred Congregation, after deliberation on February 20, 1897, decided to respond: "Considering all the circumstances, in the cases occurring, two Masses should not be applied per week." VARSOVIAN. DISPENSATION OF MARRIAGE. January 29, 1837. Session 24, chapter 5, Concerning marriage. COMPENDIUM OF THE CASE. In the church under the title of the Patronage of Saint Joseph, in Warsaw, Vladislaus, 27 years old, entered into marriage on June 20, 1888, with Hedwige Nepomucena, aged 23, and went to her home. The day after the wedding, the spouses attempted to consummate the marriage, but it appears that the marriage was not consummated, and although they made several attempts, the spouses assert that these always failed. After disagreements arose, the husband, after about a year had passed since the marriage contract, and with the consent of his wife, left her home, and affirms that he has had no further relationship with her. Records, Volume XXIX, page CCXLVIII, 46.

[*Latin ed. p. 722*]

722 VARSOVIA. Quatuor annis postquam fuerant separati, mense Februario anno 1894, Vlaclislaus adivit Consistorium Generale Varsaviense, petens ut nullitas matrimonii sui declararetur. Cum Consistorium frustra tentaverat coniuges ad concordiam revocare, inquisitionem judicialem instituit. Coniuges, interrogati primo, affirmarunt se, post multa conamina, non potuisse matrimonium consummare. Testes septem, ab utroque coniuge producti, viri et mulieres, laudes summas extollunt de honestate et religione utriusque; et multi deponent, se tempore certo sciverunt, matrimonium consummari non potuisse. Denique,

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non omissa est inspectio corporalis utriusque coniugis, servatis ad unguem canonicis praescriptionibus. Actis processualibus absolutis et diligenter examinatis, Iudex die 25 Maii 1895 declaravit non constare de nullitate matrimonii, quamquam vero existimavit mulierem "esse virginem, nec matrimonium consummasse." Quapropter, actor postulavit dispensationem a matrimonio, quae gratia ipsa mulier petita est. Archiepiscopus, processum acta transmittens, petitionem actoris commendat, praesertim quia "attenta aetate in summo incontinentiae periculo reperitur." DISPUTATIO SYNOPTICA. Advocatus viri orationem suam in duas partes divisit, in prima de non consummatione matrimonii, in altera vero de causis dispensandi. Primum caput defensor aggrediens, ait inconsummutionem matrimonii prae primis depositionibus coniugum evidentem esse. Sane, vir iuratus fatetur, se cum uxore coire numquam potuisse, quamvis id saepe tentaverat; "nam in muliebribus uxoris obiciem aliquid sentiebam." "Pro certo mihi constat, me matrimonium non consummasse, et ideo opinor, uxorem meam esse virginem."

DEFENSIO VIRI.

[*Latin ed. p. 723*]

WARSAW. Seventy-three physicians were consulted regarding the impediment to consummating the marriage. None prescribed any remedies. Doctor Zagórski attributed the impediment to cohabitation to the husband's nervousness and the enormous size of his virile member. The wife, as far as I know, consulted no physicians. During the period of our conjugal cohabitation, I mentioned, in a confused manner, to some family members, that our marriage was not consummated; although I cannot now specifically name to whom I said this. On occasion, I reprimanded my wife for the fact that I was unable to lie with her, and she replied: "Do not try, because you are not well." The husband's confession, the lawyer states, is corroborated by the wife's statement: "For approximately one year, I lived with my husband. I know that my husband attempted to consummate the marriage during that time; but I do not remember how many times he did so. I do not have absolute knowledge, but I am convinced that our marriage was not legitimately consummated. I certainly affirm that I remained a virgin. I have mentioned to no one that our marriage was not consummated between us." However, the lawyer notes that if the wife omitted to relate the details of conjugal relations, and thus to explain the circumstances of the erection of the virile member and other similar matters, this must be considered to have been done out of modesty and innate anxiety, as her brother also testifies; and that if the Judge had required it, she would certainly have been unable to provide such details. Furthermore, the husband's advocate maintains that any collusion between the spouses must be entirely excluded. For

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not only from their own dispositions, but also from the testimony of some witnesses, it is clearly evident that, at a time when there was no suspicion, they knew that disagreements had arisen between the spouses, and that the husband's departure from his wife's home occurred solely because of his relative inability to consummate the marriage. Moreover, the husband's advocate observes that the witnesses, with the utmost integrity and piety, unanimously praised the virtue and religion of the spouses. Therefore, since even the slightest suspicion of collusion between them must be excluded, their testimony regarding the non-consummation of the marriage must be given the greatest weight, as stated by Consci, De separ. thor. coniug. lib. 3, cap. 2, no. 134: "Especially if there is no suspicion of any fraud."

[*Latin ed. p. 724*]

724 VARSAVIA. "The spouses deny the collusion." And the Rota in Bononia, concerning the Nullity of Marriage, June 15, 1876. "And although, before the Vice-Comte Deveniens, who then became the advocate to confirm, both spouses shone with outstanding probity and religion, certain depositions of witnesses of the seventh hand are presented from both sides, as related in many summaries. Furthermore, the advocate notes that the witnesses confirm the spouses' depositions, not only generally, asserting that their depositions are worthy of the highest trust, but also that some confess that, at a time not at all suspect, they knew that the marriage had not been consummated, and therefore disagreements and animosities arose between the spouses. This is especially confirmed by the brother of the husband, and others. Therefore, the advocate argues, since witnesses of the seventh hand are produced from both sides, and not only generally acknowledge that the spouses' depositions are worthy of the highest trust, but also more assert that, at a time not at all suspect, they knew that the marriage had not been consummated, and furthermore, some add that this occurred due to the husband's impotence, then the very foundation is strengthened, that the marriage was indeed never consummated. Nor does it matter that some of the witnesses are relatives and affine of the spouses. For, first of all, it is established in law that properly examined and sworn witnesses can provide full proof of whatever condition or quality, as taught by the Rota, in the case of Meievitana concerning Separation, July 14, 1817, section 6, and in Rome, or Veliterna, concerning Pecuniary matters, January 20, 1817, section Cesarei, and July 4 of the same year, section Serlupi. Furthermore, the advocate observes that it is a particular characteristic of matrimonial causes that parents and relatives, in clandestine acts, can not only be received to give testimony: but are preferred, because matters are involved that otherwise could not be ascertained. And this is especially true in cases of nullity of marriage, especially due to impotence or lack of consummation. Thus, Cosci, op.

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cit., book 2, chapter 8, section 13. Therefore, the advocate says, from the concordant and sworn...

[*Latin ed. p. 725*]

WARSAW. Based on the testimonies of seventy-two witnesses, along with other evidence, a moral argument arises which, even if other arguments were lacking, would be entirely sufficient to establish moral certainty regarding the non-consummation of the marriage, and therefore, to grant a dispensation. However, he continues, there is no need to call witnesses when the physical evidence of the woman's virginity clearly appears through a proper physical examination. Indeed, it should not escape anyone, even if the husband objects, that the woman's oath must be considered, if she proves herself to be a virgin through the appearance of her body. And, he says, two doctors, three midwives, and an honorable matron selected by the Consistory, pledge to faithfully perform the requested task. Instructions regarding the proper conduct of the examination are provided to them by the defender of the marriage, which are meticulously observed. The midwives have sworn to uphold the integrity of the woman. The sworn and unquestionable judgment of the midwives regarding the woman's virginity, he states, is confirmed by the double testimony of the doctors, one recorded in writing immediately after the woman's examination, and the other presented before the Judge. The advocate notes that, although the Warsaw Consistory may have considered that there was insufficient evidence of the nullity of the marriage due to the husband's impotence, it nevertheless solemnly declared the woman's virginity, and therefore the non-consummation of the marriage, without any hesitation whatsoever, stating that it was "certainly proven that she was called to the marriage as a virgin, and that the marriage was not consummated." Therefore, three midwives and two doctors proclaimed the woman to be a perfectly chaste virgin, upon whose testimony the judgment of the archiepiscopal court is based. It should be clear to no one, the advocate argues, that the unanimous and absolute judgment of these five experts and the tribunal must be followed without fail. Furthermore, he notes that the experts involved in issuing this judgment have taken into account all relevant factors, among which, without controversy, are the integrity of the hymen and the absence of...

[*Latin ed. p. 726*]

726. WARSAW. And indeed, the fissures or scars are clearly visible. Therefore, the ultimate proof is present in the matter, for the midwives found in Hedwig, besides other signs of virginity, an intact hymen, which all the principal and most certain authors of anatomy and forensic medicine recognize as an undeniable argument of inviolate chastity. The advocate declared, "It is unnecessary to bring forth anything further,

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but lest anything be omitted, and in order to more clearly demonstrate that the midwife Szyszckowska contradicts herself, she asserts that all the signs of integrity can remain after complete coitus, citing Zacchias, *Quaestiones Medico-Legales*, Book 4, Title 2, Question 1, paragraphs 2 and following, Bartoli, *Institutiones Anatomiae*, Book 1, Chapter 31, and among more recent authors, S. Sutaud, *Manuel de Médecine Légale*, paragraph 20. This doctrine, he says, has been confirmed by the Sacred Congregation, for in such cases, the opinions of physicians are usually followed by established practice, and a dispensation from a valid marriage is granted. Turning to the second point, namely the causes for dispensing, the advocate wishes to demonstrate that not only ordinary, but also a particular and proper cause is present in this case: namely, a most serious doubt of impotence, if indeed it can be called a doubt, which is confirmed by the evidence of the facts. Omitting the depositions of the husband and the witnesses, he presents the concordant judgment of three experts, who, after the most careful examination of the man's body, swore their opinions, demonstrating the man's impotence. From these medical opinions, according to the advocate, it is clear that the actor's relative impotence is not merely probable, but certain. However, the advocate continues, even if we admit only that his impotence is probable, the primary and most important argument for a dispensation follows from this. For in this case, rather than a true dispensation, it is said to be a prudential administration of justice, declared under the more noble title of nullity of marriage. This is what Ursaya, Volume 3, Part 2, Discourse 21, paragraph 104, Cardinal De Luca, *De Matrimonio*, Discourse 9, paragraph 8, Cosci, *De Separationibus Theologicis*, Book 2, Chapter 2, paragraph 387, and many others teach.

[*Latin ed. p. 727*]

WARSAW. 727. The advocate presents a second reason for granting a dispensation, based on the mutual consent of the spouses, in which case the Canonists commonly teach that any reason, however slight, may be admitted, provided it is not incongruous: Cosci, op. cit., book 3, chapter 2, paragraph 95; Fagnanus, etc. Indeed, even the woman may request a dispensation. A third reason is presented based on the aversion of the souls, with no hope of reconciliation, which is certainly considered a very serious reason for granting a dispensation, as taught by Cardinal De Luca, in the aforementioned passage; Sánchez, *De Matrimonio*, book 12, dispute 16, paragraph 3; Cosci, op. cit., book 1, chapter 16, paragraph 651. Furthermore, the fact that there is aversion between the spouses, and no hope of reconciliation, is clearly demonstrated by the entire record of the proceedings. In this situation, the advocate states, a very serious argument for granting a dispensation arises from the danger of incontinence and the fear of fornication. Thus, Sánchez, in the aforementioned passage, dispute 15,

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paragraph 19; Fagnanus, chapter *Verum*, paragraph 11, *De Conversione Coniugum*; and Ursaya, volume 3, part 2, paragraph 92, etc. It is clearly evident, he concludes, that there is great reason to fear that both are in danger of falling into fornication and adultery. This concerns a man and a woman who are not, indeed, advanced in age, and who are endowed with robust health. Hence, the Archbishop himself states that he is transmitting the records "with the utmost humility on behalf of the petitioner, who, due to his advanced age, is found to be in the greatest danger of incontinence."

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE BOND. The defender of the marriage bond, on the contrary, maintains that the marriage was consummated, and he finds his first argument, in his opinion, in the fact that the spouses have remained silent for many years. If the situation were as they now describe it, he argues, they certainly would have initiated legal proceedings against the marriage before the year 1894. Moreover, according to the speaker, the arguments presented to demonstrate that the marriage was not consummated are not conclusive; nor is it certain that the spouses suffer from a relative impotence concerning intercourse. Indeed, to prove the lack of consummation of the marriage, they present the testimony of three midwives, who...

[*Latin ed. p. 728*]

728 VARSOVIA. Mandato iudicis, corpus Hedwigis inspectum est. Sed cum iudex interrogavit: "Num pudenda manifestant consummatum matrimonium vel temptatam ad hunc finem copulam?", obstetrix Szyszkowska respondit: "Non possum determinare, utrum dna Hedwigis consummaverit matrimonium necne." Cum hac obstetrice, aliae duae concinuerunt. Quae quidem, una voce omnium, responsio obstetricum, cohaeret apprime factis quae obstetrices in corpore Hedwigis deprehenderunt, urget defensor. Etenim, omnes obstetrices deprehenderunt mammas demissas in Hedwige. At vero, inter argumenta violatae physicae virginitatis, mammas aliquantulum demissas recensent eae ipsae obstetrices; et, verum est, in virginibus, testatur Zacchias, quaestiones medicae, liber 4, titulus 2, quaestio 2, n. 16: "Mammas non diffluentes et laxas, sed in seipsas recollectas esse decet." Nec est momenti iudicium medicorum adversus oratorem. Novum enim non est, quod medici, absque ulla errandi formidine, virginibus immerito accenseant feminas, quarum virginitatem vel dubiam vel certo suspectam iure habent obstetrices. Hoc contingit, quia exploratio virginitatis, non in abstrusorum medicinae theorematum resolutione consistit, sed in subtili, diligenti atque scrupulosa observatione factorum, qua in re mulieres magis aptae inveniuntur; et hanc praecipue ob causam, praeter naturalem honestatem, factum est ut in huiusmodi negotiis adhiberentur obstetrices. Non inficit ligaminis vindex, hymenem inter potissima virginitatis indicia ab archiatris recenseri, sed contradictori non potest subscribere, dum contendit hymenem ex se esse certum

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virginitatis argumentum. Etenim, Zacchias in hac re facile princeps docet, liber 4, titulus 2, quaestio 1, n. 28 et sequentes: "Potest virgo defluere, imo etiam concipere, absque eo quod hymen disrumpatur." Quod Zacchias fuso calamo duplici modo evenire demonstrat. Atque moderni medici mentem redarguunt peritos, qui fallacibus genitalium, sive hymenis, indiciis contenti, feminas virgines aut corruptas pronunciant, ceteris muliebris corporis partibus haud examinatis.

[*Latin ed. p. 729*]

WARSAW. 729 Another cause for the dissolution of marriage, namely, the alleged relative impotence, is easily dismissed, continues the defender of the sacrament. For, when asked by the Judge: "From whence do you believe this impotence to originate?" the doctor Zielinski replies: "I cannot, with scientific certainty, state whether Vladislaus is capable of intercourse with his wife, or with other women." Edward Bondy, indeed, states: "I believe Vladislaus to be subject to a relative psychological impotence, and that he will never be able to consummate his marriage with this woman." However, while the doctor explains this opinion, he clearly demonstrates that he believes this to be the case based on evidence that is, in fact, to the contrary. He states: "The association of this marriage, without marital affection, the disproportionate age, and the lack of sexual instinct towards his wife, have created a relative psychological impotence." But the defender argues that, from the sworn testimony of the couple themselves, it is clear that they entered into the marriage solely out of love, and that they are of nearly the same age. Furthermore, he says, Edward Bondy found relative impotence in the lack of sexual instinct towards his wife. But Vladislaus, in his judicial examination, exposes the doctor to the charge of perjury. For he swears: "At first, I almost daily attempted to lie with my wife; later, less frequently. My wife did not resist my advances for several months; later, she sometimes denied me her body, and felt weakened by it." Therefore, the defender argues, Vladislaus should not be disbelieved when he says: "I am certain that I have not consummated my marriage, and therefore I believe my wife to be a virgin." And he considers Hedwigis' confession to be of equal weight; for, besides the fact that she herself confesses in her favor, and that, like Vladislaus, she desires the marriage bond to be broken, there is a significant observation by the court clerk in the record: "It is noted that the defendant (Hedwigis) initially excused herself from taking the oath, and after the deposition, in..."

[*Latin ed. p. 730*]

730 WARSAW. The protocol refused to provide clarification regarding the circumstances surrounding the consummation of the marriage. Furthermore, the witnesses, whom the husband's advocate claims were informed of the alleged lack of consummation at an opportune time, do not

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provide conclusive evidence. Finally, the tutor believes that the marriage can be considered unconsummated without impunity. For, the necessary causes, both for a licit and a valid dispensation, are lacking. Indeed, the alleged impotence of the spouses, which the husband's advocate so strongly emphasizes, is not only uncertain, but not even probable; rather, from what has been discussed above, according to the speaker, it appears that Vladislaus fabricated it to suggest a false lack of consummation, among other lies. To insinuate the lack of consummation, Vladislaus himself first undermined Hedwig's will, which excludes impotence. In fact, Alfridus Czarnomshi, Vladislaus's brother-in-law, reports: "About a few months after the marriage, when Vladislaus was in Warsaw, he openly told me that he did not want to live with his wife in a conjugal manner, and this was the cause of their separation." This testimony is corroborated by Joseph Glogowski, Mary Czarnomska, and Joseph Izychi. With these premises, the question was raised: Should one consult the Holy See regarding a dispensation from a valid but unconsummated marriage in this case? RESOLUTION. After deliberation on January 23, 1897, the Sacred Congregation decided to respond: Affirmative.

[*Latin ed. p. 731*]

731 BERGOMEN. ULTIMAE DIE 20 FEBRUARII VOLUNTATIS 1897. Per summaria precum. COMPENDIUM FACTI. Ordinarius Bergomen, retulit: sacerdotem Iulium Natali, suae Dioecesis, anno 1742 instituisse Beneficium Legatum indolis privatae et fideicommissariae, favore descendentem diversarum linearum propriae familiae, quibus cordi esset sequi studia ecclesiastica, disponendo ut reditus istius beneficii erogarentur in hoc opus. Adiecisse autem, quatenus in praefatis lineis non adesset filius, qui vellet aut posset huius frui reditibus beneficii, volo ut haec haereditas, pro tempore illo, administretur a patrefamilias ex duabus primis lineis, quae prius de beneficio frui deberent cum onere recte administrandi et utendi reditibus pro re opportune manutenenda, et litandis missis per totum vacationis tempus. Anno 1844 alter sacerdos Petrus Natali, haeredes vocabat, filios masculos sui nepotis Andreae, nec non filios masculos sui fratris Bartholomaei, haec addens: seponatur ab haereditate mea vis libellarum 3456, quarum reditus adhibeatur ad hoc ut scholae vacare possit alter ex filiis descendentibus a nepote Andrea, et a fratre Bartholomaeo. Quum non satis esset beneficium institutum a sacerdote Iulio Natali, adieci favore descendentium ex dictis lineis libellas 3456, quarum fructus cedet favore duarum linearum, alternatim incipiendo a meo pronepote Iulio Natali, filio Andreae. Adiectio haec erit tantum pro nostra familia. Nunc vero quum adsit in familiis, quae ius habent ad fruitionem secundi legati, alter qui studiis incumbit ecclesiasticis, dubium surgit utrum reditus eiusdem legati addi debeant capiti, vel dividi inter familias vocatas ad fruitionem legati Petri Natali, ceu interesse habentes credere inclinant: adducti in hanc sententiam

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ex testatoris dispo-

[*Latin ed. p. 732*]

732 BERGOMEN. Regarding the disposition; he wished that, after one line of inheritance had ceased, the inheritance of the legate should pass to the surviving heirs; thus, it would seem that even in the case where there is no one engaged in ecclesiastical studies, the heirs of the legate can enjoy the revenues of the legate.

Disputation: Synopsis of Observations. The heirs of Peter Natali wished to prevent the fruits of their legate from being accumulated with the revenues of another legate, Julius Natali, when they could not be applied to the cause expressly designated by the testators.

Indeed, Julius Natali substituted a pious cause for the primarily expressed intention; deciding that such accumulated revenues should be administered "by first applying them to those improvements that were most suitable, and then spending the surplus annually in the celebration of Masses, etc." Therefore, if the legate is to be considered fulfilled in the pious cause, which should consult the appropriate institution for adding young men to the clerical order, then the cause to which revenues are also allocated for the celebration of Masses is even more pious.

Reiffenstuel states in title "De testamentis" n. 137: "By the name of a pious cause, all places and pious institutions are included, such as churches, monasteries, hospitals... as well as all the poor, not only those who lack the necessities of life and nature, but also those who, having the necessities of life, lack the necessities for decent sustenance, according to their quality and condition, provided that the inheritance or legacy is primarily left for the honor of God and the salvation of souls." Indeed, legacies or testaments for pious causes enjoy a privileged or broad interpretation and great legal favor.

This is demonstrated by Fagnanus in chapter "Cum esses" of the aforementioned title "De testamentis," and by Pirhing in the same title, n. 19, so that in the "Corpus iuris canonici," especially in these causes, a new form of testation has been introduced in the celebrated chapter "Relatum" and in the chapter "Cum esses" h. t., exempt from all formalities of Roman law.

Therefore, regarding the intention...

[*Latin ed. p. 733*]

BERGOMEN. 733. The inheritance of the Priest Peter Natali is hindered by this privileged bequest, which, without doubt, must be understood to the advantage of the pious cause, namely, that the revenues not spent on the business of studies should be accumulated to preserve the bequeathed fund, and to provide for the celebration of Masses, according to the will of the Priest Julius. – However, the bequest of Peter clearly indicates that it is to be considered as an addition to the will of the Priest Julius; indeed,

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his words state: "Not being sufficient the benefit already established by the Priest Julius Natali." But it is objected that the bequest of the Priest Peter seems to augment the benefit of another Priest, extending it, through added revenues, to another purpose. In truth, the Priest Julius provides "for those descendants of the various lines of his family who had intended to pursue ecclesiastical studies," while the Priest Peter, concerned with a more worldly matter in his bequest, intends "to send one of the children of the two descendant lines to school, beginning with my great-nephew Giulio Natali, son of Andrea." The petitioners do not state whether this Julius, the testator's nephew, was engaged in ecclesiastical studies in order to be admitted into the clergy; but other words of the testator clearly indicate that he had the intention of providing for the education of his nephews, but did not wish to have a preference between ecclesiastical and secular education. – He adds: "If one of these lines were to become extinct, another will succeed it, and if in the last remaining line there are no male children, the bequest may be disposed of as they please by the members of the line, always remembering the benefactor and the other deceased members of the family." Therefore, the testator's intention seems to be to augment the benefit, extending it to another purpose; so that only works of piety may be commended to the grateful minds of the legatees. With these premises, the question was raised as to what should be the answer to the disputed matter. RESOLUTION. The Sacred Congregation, after deliberation on February 20, 1897, decided to respond: The bequest of the Priest Peter Natali.

[*Latin ed. p. 734*]

734 BERGOMEN. It is stated that it is separate and independent from the other legation of July Natali, and that its income, according to the expressed intention of the founder, the Reverend Father REGIEN. JURIUM, on April 3, 1897, Session 24, Chapter 12, Concerning Reforms. In the city of Regiae, an illustrious Collegiate Church of Saint Prospero stands out, renowned for its antiquity. The patron saint of the city and diocese, to whom the Cathedral was not infrequently granted the title in ancient documents, possesses distinguished honors and privileges. This college, also notable for its size, comprised 12 canons and 27 priests, and at the end of the last century, it suffered the disruption of civil governance and was subsequently stripped of its possessions in these recent times; nevertheless, it still numbers 11 canons, all of whom are instituted by the right of patronage. However, the choral service, after the constitution of September 19, 1841, approved by Bishop Cattani, is now performed only on feast days, and is not fully observed except on the most solemn days, namely seven times a year. Currently, a dispute arises between the canons and the parish priest regarding the limits of the rights of the parish priest, as the canons insist on adhering to established customs; the parish priest, on the other hand, attempts to cast doubt on the established custom, or at least to interpret it differently.

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To understand the scope of the dispute, the following points raised by the parish priest are presented below.

COMPENDIUM OF THE FACTS. A Synopsis of the Dispute. Regarding the first point, the canons have presented numerous documents to demonstrate the ancient origin of this college, which...

[*Latin ed. p. 735*]

REGIEN. From the year 735 until 999, the ancient monastic seat, located outside the city walls, was abandoned; as is reported, it then transferred to the urban church, where, with all its rights and privileges preserved, it exercised parochial functions, serving as the mother church and principal church of many churches. At that time, the care of souls, at least in a habitual sense, seemed to reside with the Chapter. However, when the actual parochial office was assigned to one of the canons, it cannot be proven by certain documents, but several indications suggest that this occurred during the time of the Council of Trent.

But whatever may be the origin of this arrangement, today the parochial functions in the aforementioned chapter are carried out by the Provost, who is honored with the title of dignity, but in reality has no jurisdiction over the chapter. The head of this chapter is the Prior, or the canon dean, to whom it belongs to convene the chapter, to preside over it, and to perform other duties of this kind. As a vestige of the previously exercised parochial administration, the canons state that they retain certain parochial rights, such as the "quarta" (a traditional funeral offering), and Masses for the deceased, with the corresponding absolutions, which are sung and performed in the name of the Chapter by one of the sacristans, and never by the parish priest or his chaplain, and this has been the case from time immemorial. Furthermore, they state that the Provost was assigned only one altar for the performance of parochial functions, and they add that it is clear that, without any opposition from the predecessors of the Provost, the parochial functions were performed at that altar, or in the chapel of the Most Holy Sacrament; so that if, at some other place, the parish priest ever wished to perform these functions, he did so with prior permission, which he obtained from the Chapter. Such a custom prevails at the Cathedral, which we will follow almost entirely; and it is also the case at the Cathedral of Parma, as well as at the metropolitan churches of Modena and Bologna, where similar arrangements are found in connection with parochial matters. The parish priest does not deny the custom, but he presents some older facts that are contrary to it, which can be explained in various ways, but which certainly do not invalidate the fact of the custom.

[*Latin ed. p. 736*]

736 REGULATION. Concerning the matter I am bringing to your attention, the Sacred Congregation has long since approved the practice of

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appointing a canon as the pastor for the actual care of souls, as it wrote on July 7, 1731, in Sarnen: "The Bishop should proceed entirely to the execution of the letters of the Sacred Congregation of the year 1646, adding also coadjutors for the care according to canon law." These letters of May 5, 1646, state: "Regarding the care of souls of the cathedral church, the Most Reverend Fathers have not approved that it should vaguely threaten the chapter, but they ordered that, with the advice of the chapter, a certain person be assigned to it, or a perpetual vicariate be established there, so that the subject people may recognize a certain pastor." Furthermore, since the parochial right of actual care was separated from the entire chapter, and the same right was entrusted to one of the canons, it became customary in the church to assign a certain place for the exercise of parochial rights, so that the functions of the choir would not be interrupted by the functions of the pastor. — Hence, in Naples, on August 6, 1698, in book 48 of Decrees, this decree of Sixtus V is cited: "And furthermore, you establish that the care of souls incumbent on the same church (namely, the collegiate and parochial church of Saint Mary Major) be exercised by one of the aforementioned hebdomadarii, chosen for life, and that, also, with the same authority, you permanently transfer to one of the chapels existing within the aforementioned church, at the discretion of the Congregation, after the possession of the aforementioned church, and when it is deemed suitable and convenient, that the same be adorned at its expense and made suitable for the exercise of such care." Then, a question arose concerning the execution of the decree, and two proposed doubts were presented, namely: "I. Is there a place for the transfer of the care of souls of the church of Saint Mary Major to one of the chapels within the aforementioned church in this case?" and "II. In the meantime, and until the aforementioned transfer is made, is it permissible for the hebdomadarius who is the pastor of the same church to read the Gospel at Mass on Sundays and holidays?" The Sacred Congregation responded "Affirmatively to both." Regarding the second doubt of the Prefect, "Is it permissible for the pastor to freely give sacred discourses to the people from..."

[*Latin ed. p. 737*]

REGENCY. 737. Regarding matters to be considered in the pulpit of the church, in this case, the following appear relevant. — In Novara, on July 8, 1724, the following two questions were raised: "I. Whether announcements concerning marriages, ordinations, and other similar parochial functions should be made during the celebration of the parochial Mass, which is celebrated in the parochial and collegiate church of Burgos Manerii, or rather, whether it is permissible for the Provost and Parish Priest of the same collegiate church to make such announcements during the celebration of a conventual Mass, contrary to the wishes of the Chapter, in this case," and "II. Whether it is permissible for the same Provost and Parish

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Priest to hold sermons for the people on Sundays and feast days during the celebration of said conventual Mass without the consent of the Chapter, in this case, etc." The Sacred Congregation decided that: "Regarding the first question, it is left to the discretion of the Parish Priest. Regarding the second, affirmatively, provided that they are given from the pulpit and do not exceed half an hour." At the end of the page of this case, it is written: "And all the more so, since the access of the people to the conventual Mass is more frequent than to the parochial Mass; and the benefit of the people is that which should be primarily considered in this matter." These last words explain the reasoning behind the decision. — Indeed, the Chapter opposes the intention of the Provost and Parish Priest, stating that there is no need to change the established custom of holding these sermons for the people from the altar of the Blessed Sacrament; and they add: "The Provost has a subsidiary church, the Basilica nearby, dedicated to St. Charles; in which he can do whatever he wishes, without dependence on the Chapter or the Sodality, which performs its own functions there, providing a small annual candle offering to the Provost, as a sign of the Provost's jurisdiction over that church. In that church, Christian doctrine is taught to children, and catechism is held. If this was sufficient for his predecessors, it is difficult to understand how it would not be sufficient now, given that the attendance at the church is now diminished." Regarding the third question: "Whether it is permissible for the Parish Priest to choose a coadjutor from the ranks of the Chapter for the performance of his parochial duties, in this case," the Chapter vehemently objects, raising two more significant points of difficulty. — First, it is entirely clear that...

[*Latin ed. p. 738*]

738. It is customary for a Canon to serve as one of the assistants to the parish priest, while the other, even if he is the Parish Priest himself, submits to the authority of the aforementioned, so that the office of assistant to the Parish Priest may be considered, in public opinion, as less prestigious, as if it were a certain indication of limited suitability in this type of administrator. Secondly, the Capitulars note that the intention of the Provost is to ensure that he may obtain the most important positions in the deliberations of the Chapter, and therefore he prefers an assistant chosen from among the Canons, namely, one who is entirely subject to him. The Bishop, in matters of recommendation and information, has the following: he may express his opinion to the Chapter contrary to it; for he does not know how the dignity of the Canons will be compromised if one of them is called to assist the Parish Priest in the care of souls in such a shortage of clergy. Nor does the service of the choir present a serious obstacle, provided it is not daily. The Sacred Congregation of the Council has expressed its opinion on this matter, referring to a decree issued in Sarnen on June 7, 1731, which reads as follows: "The Bishop should proceed to implement the decrees

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of the Sacred Congregation of the year 1646, including the appointment of assistants for the care [of souls] from among the Canons." In Milan, on April 2, 1732; regarding the second question: "To whom does the right of choosing an assistant belong, in the exercise of the care [of souls], whenever it is necessary?" The Sacred Congregation of the Council considered it appropriate to respond: "It belongs to the Provost, with the approval of the Ordinary." Regarding the fourth question raised by the Provost, namely: "Can the Parish Priest assign other confessors to the confessionals of the church which are not occupied by the Canons, in case of need?" First of all, the Capitulars note that this necessity, of increasing the number of confessors in the church, is not currently felt; and that two confessionals reserved for the Parish Priest are sufficient, and they add: "There is no sufficient reason for the Parish Priest to claim a privilege contrary to the rights of the Chapter concerning the church and the confessionals, for any Canon, without exception, including the Provost, can propose confessors to the Chapter." In Milan, as cited above, regarding question 13: "Can the Canons, without the consent of the Provost..."

[*Latin ed. p. 739*]

REGISTRUM. 739: "Audiere in Ecclesia confessiones et administrare Sacramenta SS. Eucharistiae." Sacra Congregatio Clericorum respondit: "Affirmatur, cum licentia Episcopi, excepto, tamen, in administratione Communionis in tempore Paschali." Praeterea, in Ecclesia Collegiata, parochianis fidelibus, pro necessitate, sacerdotes praesto esse debent ad audiendas confessiones, et aliquando etiam alii Canonici cogere possunt, juxta intentionem rescripti in Sypontina die 23 Novembris 1737, in qua Sacra Congregatio Clericorum censuit: "Presbyteros capitulares teneri praestare assistentiam morientibus in casu necessitatis, etiamsi cura animarum sit penes solum archipresbyterum." Sed in huiusmodi negotio, a Praeposito nihil mutari videtur, sine expresso consensu Ordinarii. Ad quintum caput quaestionis: "An pium exercitium, vulgo dictum Mensis Marialis, recenseri debeat inter functiones parochiales in casu," Capitulum animadvertit, se non posse pati ut pium exercitium peragatur cum solemnitate cantus et concionum, quoniam non suppetunt opes ex reditibus Fabricae Ecclesiae; sed certe oportet habere quod legantur in Ecclesia piae meditationes in mense Maio fidelibus propositae a Patre Muzzarelli, et arbitratur hoc facere satis et fidelium votis et animarum profectui spirituali. Sed, ut patet, quaestio iuris eo spectat ut determinetur huius functionis natura, quae si parochialis definiatur, Parocho competit ab eo ordinanda erit; si vero inter functiones non parochiales sed ecclesiasticas recenseatur, tunc in Ecclesia Collegiata sine consensu Capituli peragi non potest. Iamvero, acris controversia efferuit in definiendis iuribus et functionibus parochialibus: quare sapientissime Romani Pontifices statuerunt rem definire per solemnia decreta Urbis et Orbis, quae

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prodierunt a Sacra Congregatione SS. Rituum die 2 Decembris 1703 et publicata fuerunt die 12 Ianuarii 1704, in quibus haec proposita fuerunt dubia: "V. An benedictiones et distributiones candelarum, cinerum et palmarum sint de iuribus parochialibus. - VI. An benedictiones mulierum post partum, fontis baptismalis,..."

[*Latin ed. p. 740*]

740. Regarding: Whether the fire [used for] incense, seeds, eggs, and similar items are of purely parochial rights. - VII. Whether all the functions of Holy Week are of purely parochial rights. - X. Whether the celebration of solemn Masses throughout the year, whether for the living or the dead, is of said parochial rights. - XI. Whether the exposition of the Forty Hours and the blessing given over the people are of said purely parochial rights. - XVI. Whether the exposition made with relics or sacred images and the blessing given with them over the people are of said parochial rights; the response was: - To V. Negatively. To VI. Negatively; but the blessings of women, and of the baptismal font, must be performed by the Parish Priest. - To VII. Negatively, as it is written. - To X. Negatively, as it is written. - To XI. Negatively. To XII. Negatively, and regarding the blessings with relics and images, the decrees must be observed. - Benedict XIV in Inst. 105 § 6, regarding the answers to question VI, notes: "To which, indeed, the response was Negative, namely, that they should not be included among the parochial rights: But the blessings of women, etc., must be performed by the Parish Priest, because these functions are proper only to the Parish Priests." But this response excludes sodalities, in which the habitual care of souls does not reside, and to which the cited decrees refer more directly; it does not exclude, however, the Canons of a collegiate parish church, as is evident. Regarding the final question, whether, given the circumstances of the times, the administration of the goods of the Church must exclusively belong to the Prefect, the Capitulars note that this is foreign to the constitution of the Chapter of this kind of Prefect. The Sacred Congregation of Councils, in Milan, already cited, on April 26, 1732, regarding question III, "Whether the right to administer the Church and all things pertaining to it belongs solely to the Prefect, or rather to the Chapter, including the Prefect," responded: "To the third, concerning the care of souls, it belongs solely to the Prefect, in the rest, to the Chapter together with the Prefect." With these observations, the proposed measures must be reconsidered.

[*Latin ed. p. 741*]

REGISTRUM. 741. Quaestiones. I. Num Praepositus parochialis tenetur ad exercere functiones parochiales solum ad altare Sacramenti Sanctissimi designatum, in casu. II. Num Praepositus parochialis potest, ad libitum suum, sacras conciones ad populum tenere ex cathedra vel pulpitum Ecclesiae, in casu. III. Num liceat Praeposito parochiali coadjutorem muneris

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parochialis sibi eligere ex ordine Capituli, in casu. IV. Num potest Praepositus parochialis ad sedes confessionarias Ecclesiae, quae a Canonicis non occupatae sunt, alios sacerdotes confessarios destinare, in casu. V. Num debet "pius exercitium vulgo dictum Mensis Marialis" recenseri inter functiones parochiales, in casu. VI. Num, consideratis temporibus adiunctis, administratio temporalis Ecclesiae debet exclusive pertinere Praeposito Parochiali, in casu.

SOLUTIONES. Sacra Congregatio, post deliberationem sub die 3 Aprilis 1897, censuit respondere: Ad I. Affirmative, excepto casu necessitatis ab Episcopo recognito, et cum consensu Capituli. Ad II. Secundum propositum, negative. Ad III. Negative, et in casu necessitatis, prudenti arbitrio Episcopi. Ad IV. Negative. Ad V. Negative. Ad VI. Detur responsum uti in Mediolani, diei 26 Aprilis 1732 ad tertium dubium, id est: Num ius administrandi Ecclesiam et omnes res ad eam pertinentes competat soli Praeposito vel soli Capitulo, comprehendenti etiam Praepositum? Resp. In concernentibus curam animarum, competere soli Praeposito; in reliquis vero, Capitulo una cum Praeposito.

[*Latin ed. p. 742*]

742 NBTEN.. ELECTIONIS, May 8, 1897. Session 25, chapter 9, Concerning Reforms. SUMMARY OF THE CASE. In the city of Palatiolo Acrae, in the Diocese of Noto, Sebastian de Fide, in the year 1714, through a legally requested instrument, stipulated that the revenues of a certain property, called Pantalica, should serve partly to endow a chaplaincy for the daily celebration of Mass, and partly to establish a sacred patrimony, destined for a cleric initiated into the sacred Orders. Sebastian established a certain law for his foundation, the firm execution of which he entrusted to the parochial administrators of the Church of St. Sebastian the Martyr. The administrators were instructed to choose a priest descended from Paul de Fide, his brother, or from Dominic de Fide, his nephew; so that those descended from Paul should be preferred to those descended from Dominic de Fide. And in the event that these were lacking, he wished that those descended from Doctor di Zocco should be chosen. Regarding what remained for the alms for the daily Mass, he ordered that it be given, under the title of the patrimony, to those, in the order prescribed above. Furthermore, the testator wished that what was given under the title of the sacred patrimony should be transferred to the recipient in full ownership, one month before the reception of the order of Subdeacon. He also ordered that brothers of St. Sebastian should be chosen. Indeed, on February 17, 1886, the administrators of the Church of St. Sebastian offered the chaplaincy to Peter Cappellani, who appeared to be 14 years old; and they also designated for him the sacred patrimony, namely, that which he would receive when he was initiated into the sacred orders. This decision of the administrators remained without contradiction until the year 1893, when Peter Cappellani,

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as he was about to be promoted to the order of Subdeacon, and was properly undertaking the matter of receiving the patrimony already destined for him, encountered an opponent, Vincent Lombardo, 18 years old, who contended before the Court of Noto that the election of the administrators was null.

[*Latin ed. p. 743*]

ITEM 743: Contrary to the founder's will; and rather, both of his bequests, namely, both the chaplaincy and the sacred endowment, should be assigned to him, given the closer degree of kinship between him and the founder. Judge Neten, on December 9, 1893, decreed that the sacred endowment should be granted to Peter Cappellani, since he was already deemed suitable and prepared to receive the order of Subdeacon; however, the granting of the chaplaincy should be postponed until Vincent Lombardo is raised to the priesthood; and if this does not occur, then the chaplaincy should be assigned to Peter Cappellani. Through an appeal, the matter was brought before the Metropolitan Court of Syracuse, which, after previously addressing certain preliminary issues on December 24, 1894, issued a final judgment on January 30, 1895, declaring that neither the deliberation of the procurators nor the judgment of Judge Neten was valid, and it assigned both the chaplaincy and the sacred endowment to Vincent Lombardo.

A SYNOPTIC ACCOUNT: The Advocate, defending the rights of Vincent Lombardo, begins by stating that the judgment of the Court of Syracuse is undoubtedly to be confirmed, first of all, considering the defect in the appeal presented by Cappellani. For the Court of Syracuse had previously rendered an interlocutory judgment, granting to the aforementioned Peter Cappellani the restitution *in integrum* against the fatal lapse that occurred in order to effect the appeal interposed by Peter Cappellani against the judgment of Judge Neten, after the ten days had already elapsed. In this interlocutory judgment, the Court of Syracuse also defined the merits of the case, declaring that no election had been carried out by the procurators of the church of Saint Sebastian. Peter Cappellani appealed against this judgment to the Sacred Congregation, alleging that the Court of Syracuse had ostensibly pronounced an interlocutory judgment, but in reality had issued a final judgment, or at least one having the force of a final judgment, and therefore...

DEFENSE OF VINCENT LOMBARDO.

[*Latin ed. p. 744*]

744. Furthermore, the Curia declared that it was not in a position to pronounce a final judgment on this matter. On the contrary, Vincent of Lombardy insisted that the Syracusana Curia should issue a definitive judg-

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ment. Therefore, the Metropolitan Curia of Syracuse, on January 12, 1895, issued a second interlocutory judgment, in which it rejected the exception of incompetence and the claim of finality, raised by Peter Cappellani; and declared itself competent, and pronounced a final judgment on January 30, 1895, against the contumacious Peter Cappellani, who had only transmitted a protest regarding the nullity of the proceedings to the Syracusana tribunal. However, the advocate for Vincent of Lombardy subsequently argued that the first judgment of the Syracusana Curia, and then the final judgment, had already settled the matter against Cappellani. Regarding the merits of the case, the advocate noted that the judgment to be confirmed was correct, because the election of Peter Cappellani was contrary to the rules of the institution. Indeed, the founder had intended that the sacred patrimony be granted to one who would receive the order of subdeacon within a month, and to a chaplain who had already been engaged in sacred duties. Therefore, the advocate argued, Peter Cappellani, being only thirteen years old, could not have been elected. Another argument, the advocate insisted, was that the founder's preference for the client over the adversary, due to kinship, was a natural inclination; and that it is only natural to exclude the closest relative in matters of succession. In support of this, the advocate cited the Syracusana judgment of January 30, 1895, in which the circumstances of both parties are described. Regarding other conditions, the advocate noted that both parties were citizens of Palatioli, and were well-disposed towards the Church, but were not members of the Confraternity, which, although it existed at the time of the donation, is now presumed to no longer exist. For the rules of the foundation state that a member of the Church should be chosen. Therefore, in order to fulfill this last condition, which is now impossible, no one is obligated.

[*Latin ed. p. 745*]

745. The advocate argues that it cannot be objected that the life of the student, who, having left the ecclesiastical seminary, underwent a trial of regular discipline, and who, having now returned to the seminary, has earned the praises of the Director, as evidenced by the records. The opposing party appeals to rule 36 of the Apostolic Chancery to argue for prescription after a period of three years from the election to the chaplaincy. The advocate for Vincent Lombardo replies that this rule applies if someone has peacefully possessed any ecclesiastical benefice for three years, either by apostolic or ordinary collation, or by confirmation or presentation and institution, etc. Indeed, the advocate insists that the disputed chaplaincy should not be considered among the benefices, because there was no Episcopal erection, nor institution of a title, and no collation.

DEFENSE OF CHAPLAIN PETER.

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On the contrary, the advocate for the Chaplain argues that the judgment should be overturned because it declares an election that could no longer be impugned due to prescription. For, according to the advocate, rule 36 of the Chancery applies, as Berardi, in *Comm. in Ius Eccl. Univ. De Benef.*, diss. 5, p. 2, cap. 1, states: "The subsequent rule, namely, 36, determines that if anyone, through any title, by apostolic or ordinary collation, or by election, or by confirmation of the election, or by presentation and institution to those to whom it pertains, has peacefully possessed any ecclesiastical benefice, whatever it may be, without any simoniacal entrance: provided that, in such benefices, if they have been reserved by an apostolic disposition in accordance with the general reservation contained in the body of the law, he has not entered into possession of them, he shall not suffer any disturbance with regard to such benefices so possessed: and any claim made for these benefices shall be void." And the same Doctor continues: "This rule operates in the same way as usucapio, or prescription, in Roman law: hence, two things are commonly said. The first is that this rule has as its foundation the example of usucapio, or prescription, in public matters, so that rights once acquired do not remain in uncertainty."

[*Latin ed. p. 746*]

746. Another consideration is that this rule grants a right to him whose right was not complete or perfect. This principle has already proven useful, because either the prescription had not yet been established in the case of benefices, or, if it could be proven to have been established, it had not yet acquired a definite form. Therefore, through the three-year rule, a true prescription has been established and a definite form has been acquired; hence, this same rule is understood by law in those matters which are not expressly stated, according to the general discipline of prescriptions... the three-year rule grants a true right to the possessor. Faber in cod. Uh. 2, tit. 6, de f. ». The opponent's objection is not valid, the advocate insists, citing the case of Vincent of Lombardy, who appealed against the election after having obtained the majority. For if the minority did not prevent Vincent of Lombardy's father from supporting his son in the vacancy of a benefice and estate, and if the father himself, after seven years, challenged the election for his son, who was already of age, and pursued the case before the diocesan and metropolitan courts, the father could rightly raise some objection on behalf of his son immediately after the election was completed. If this is permissible, the advocate continues, to make clear the true cause of this delay, it must be said that Vincent of Lombardy, through his father, began to challenge the election of Peter Cappellani when, after the death of the parish priest Vincent G-alleri, who, together with all the other advocates, had conducted the election, John Lombardo was elected as parish priest, and who, while serving as an advocate for the church of St. Sebastian M. during the time of the election, had given a favorable vote to Peter Cappel-

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lani without any exception, and subsequently did not hesitate to favor his relative. Because the opponent objects, the father of Sebastian Cappellani gave a declaration on February 17, 1886, in which he declared that he was prepared to pay all expenses that would be incurred if anyone challenged the election of his son, from which declaration the opponent argues that the advocates of the church of St. Sebastian conducted the election with a Simonian intention. The lawyer for Cappellani denies this consequence, stating that this declaration at least proves this much: 1. that, in truth, the advocates...

[*Latin ed. p. 747*]

NETEN. 747. Those who were learned and wished for Peter Cappellanus to be elected, chose him, which is sufficient to defend our thesis, for two reasons: 1. Because the Procurators knew of the bad character of the opponents, and they did not hesitate to restrain them; 2. Because Vincent of Lombardy was capable at that time, but he had not dared to oppose the valid election of Peter Cappellanus, which he would have done if this election were not valid in every respect. Furthermore, the advocate argued that the requirements for the foundation were better fulfilled in Peter Cappellanus than in Lombardy. According to the Procurator, the founder stipulated that for the passive right to the sacred patrimony and benefice, only a descendant of Paul, his brother, should be chosen; and if there is no descendant of Paul, then a descendant of Dominic, his paternal uncle, should be chosen, or, in his absence, a descendant of Conrad Zocco. Indeed, Peter Cappellanus descends from Paul of Fide in the seventh degree. Therefore, he possesses the first requirement for the passive right. Since Vincent of Lombardy is only six degrees distant from the root, the advocate noted that Vincent of Lombardy could be chosen from this point of view, but the Procurators were not obliged to choose him. Because if the founder considered those who were more pleasing to him to be closer, even among the descendants of the same line, he could express this, in the same way that he made it clear and desired that descendants of Paul be preferred to descendants of Dominic of Fide and to descendants of Conrad Zocco; indeed, the founder himself, setting aside the very descendants of Paul of Fide, chose on one occasion a great-nephew and on another occasion another descendant of Conrad Costa. And this greater proximity, the advocate continues, which should rather be called a lesser distance from the root, is less important, because it is well understood that there is greater or lesser affection between a father and son, or a nephew, or even a great-nephew, but there can be no comparison made between the root and a descendant in the sixth degree rather than in the seventh. Finally, according to the advocate, the Procurators acted admirably in the election of the Lord Peter Cappellanus, because among the relatives, they chose the more worthy one.

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For, although it is not strictly required that a...

[*Latin ed. p. 748*]

748. It is fitting to choose someone more worthy for simple benefices, and even for parochial positions (Barbosa in chapter 18, session 24, Council of Trent, number 132; Fagnanus in chapter 3, *De iure patronatus*, number 16); nevertheless, as the Sacred Roman Rota notes, page 10, paragraph 262, number 8, it is also safer to grant simple benefices to those who are more worthy. Cf. chapter 29, *De Praebendis*. According to the requirement declared by the founder in the aforementioned words, "that he wishes to become a priest." Indeed, the advocate, Peter Cappellani, states that at the time of the election, he was 14 years old, and had already received testimony in the diocesan seminary from his own parish priest, the Rector of the Seminary, and the Bishop; therefore, he was closer to the state of priesthood and had already been proven in his vocation, while Vincent Lombardo, who at the time of the election was only 11 years old, was unable to provide any testimony, nor did he obtain it later. Furthermore, the advocates rightly judged, and this was later confirmed regarding his vocation, because Peter Cappellani obtained the most excellent testimonies from everyone without any exception, so that he deserved to advance to the order of subdeacon without any title, while Vincent Lombardo demonstrated instability of mind and a lack of vocation, first by leaving the religious order of the P.P. Preachers to which he belonged, and then by being expelled from the Seminary, and although he was received again into the Seminary after a year, he nevertheless remains in the process of probation when he should already be mature. The third requirement, expressed in those words, "inhabitants in this city," is beyond question. The fourth requirement is expressed by the founder in this way: "that the aforementioned persons nominated for the chaplaincy and donation as a patrimony, present and future, in perpetuity, must be brothers of the Church of St. Sebastian... and if they are not such... they are excluded from this donation and chaplaincy, because it so pleases [the founder]." The question raised concerns the meaning of that particle, "brother of the Church of St. Sebastian," whether it means...

[*Latin ed. p. 749*]

SECTION 749. The word "brother" should be understood to apply to those associated with the Brotherhood, or rather, to those who have a love or affection for the church of St. Sebastian. Indeed, according to the speaker, this word "brother" cannot be understood to mean someone associated with a particular Brotherhood, because at the time of the foundation of the endowment, there was no Brotherhood in the church of St. Sebastian. Furthermore, the Brotherhood of the Most Holy Cross, which was established a few years later, was founded because, at the same time, a chapel was built, which was attached to the church of St. Sebastian, as an "added

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body" to the church. Moreover, the founder speaks of "present and future" individuals who "must be brothers of the church of St. Sebastian... and if they are not, they will be excluded from this endowment and chapel because that is what they desire." Therefore, the condition imposed by the founder must have been possible for people living at that time. Hence, it seems to the speaker that the word "brother" should be understood in another sense, or as expressing a particular love for the church of St. Sebastian. The speaker draws this conclusion from custom, which is the best interpreter of the law, as stated in chapter 1 of the "De Consuet." and law 26 in the "Dig." Furthermore, it is always, and especially at the time of the last election, January 30, 1841, that Joseph Messina is said to be "the closest to the Sacred Order of the subdiaconate, possessing the principal quality of being attached to the aforementioned Venerable Church, etc." And from the act of election of Peter Cappellani, it is said of Peter Cappellani: "that he is not only attached, but very attached, due to the ancient tradition of his family, to the church of St. Sebastian." Indeed, the speaker points out that the very sentence of the Metropolitan Curia states: "No one can give so much to the church as those who are of the Cappellani family, over time." Because, moreover, the question could still be raised as to whether the chapel in question is truly a benefice, I note that in the documents, nothing is mentioned or indicated from which it can be deduced that this foundation of Seba-

[*Latin ed. p. 750*]

750. It is understood that the foundation of the Brotherhood of Saint Sebastian was established by the authority of a competent Bishop, and that no ecclesiastical institution whatsoever exists, apart from the election of the churchwardens of Saint Sebastian's. Having presented these facts to both sides for the knowledge of the cause, the following questions were proposed to resolve Doubt I: Whether the judgment of the Syracusae [Syracuse] tribunal should be confirmed in its entirety, and to the extent that it is negative: Whether the election of Peter Cappellani, both to the chaplaincy and to the sacred endowment, should be upheld in this case.

RESOLUTION. The Sacred Congregation, after discussion on May 8, 1897, decided to respond as follows: To I, negatively. To II, the sacred endowment should be granted to Peter Cappellani; and the obligations of the chaplaincy should be fulfilled in the meantime according to the foundation statutes.

FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS.

Statutes of the Society of the Apostleship of Prayer (1).

I. The Apostleship of Prayer is a pious Society which exercises the

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apostolic mission of promoting the divine glory and the salvation of souls through prayer, whether mental or vocal, and through other pious works, insofar as they are conducive to obtaining graces, and to reconciling us with the Most Sacred Heart of Jesus, in order to achieve the aforementioned end. Therefore, although the Apostleship of Prayer may appear to have certain things in common with other pious Societies, such as the Most Holy Heart of Jesus and the Living Rosary, it is nevertheless entirely distinct from all of them, both in its ultimate purpose, which is the most universal, and in the particular means by which it operates.

(1) We present these statutes so that the distinction of this pious Society may be known, from the association of the Living Rosary.

[*Latin ed. p. 751*]

751 II. There are three degrees in this Apostolate, corresponding to the variety of works it undertakes, hence a threefold order of members. The first degree (which is essential and common to all members) is comprised of those who daily offer, through a certain formula, all their prayers, actions, and sufferings to God, together with the Most Holy Heart of Jesus, and for all those ends for which Our Lord constantly intercedes, and who offers Himself in sacrifice for us. Therefore, love and devotion to the Most Holy Heart of Jesus are very proper to all members who are devoted to the Apostolate of Prayer; indeed, this devotion, although it does not constitute the purpose of the Society, is the most powerful and entirely unique means by which all members, moved by the example of the Most Holy Heart of Jesus, are encouraged to dedicate themselves more earnestly to prayer, and the prayer itself, when performed together with the same Most Holy Heart, becomes more efficacious, and achieves the intended goal of promoting divine glory. Therefore, the Society of the Apostolate of Prayer is clearly distinct from the Archiconfraternity of the Most Holy Heart of Jesus, and therefore, Societies, Churches, and all those who join themselves to this pious work should not be considered as subsequently enrolled in the Archiconfraternity of the Most Holy Heart of Jesus, established in Rome in the church of St. Mary of Peace, unless they have been duly received into that Archiconfraternity by its Moderator. III. The second degree consists of those who, in addition to those things which are proper to the first degree, that is, in addition to prayer, through which they obtain the intercession of the Most Holy Heart with the Father for the promotion of divine glory, also offer other prayers to the Blessed Virgin Mary, so that they may implore the help of the most powerful Mother, and consider her as an assistant in this pious work of promoting the salvation of souls. These, indeed, pray the Our Father with ten Hail Marys each day, with the intention that is indicated to them at the beginning of each month, approved by the Roman Pontiff, but they cannot, for this reason, be considered enrolled in the pious work of the Living Rosary, nor are they subject to the regulations by which it is

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governed, that is, to meditate on the mystery assigned to them by lot while praying, and to be distributed in groups of fifteen members. IV. The third degree is constituted by those who, while performing the works of at least the first degree, also strive to remove obstacles, so that our prayers for the salvation of souls offered to God may not be rendered ineffective. For this purpose, each month or week, EX S. G. E P. ET REG.

[*Latin ed. p. 752*]

752. EX S. C. E P. ET REG. according to the norms of the Brief dated 10 February 1882, they perform the Reparatory Communion, by which they strive to appease the Most Holy Heart of Jesus, offended by the sins of men, and to render our prayers pleasing. Therefore, all those who are enrolled in this third grade, and who perform the aforementioned Communion according to the regulations established for the pious Work of Reparatory Communion, are constituted members of this association, and enjoy its Indulgences. V. Likewise, although the pious Sodality, now called "The Holy Hour," is different from the "Pious Society of the Apostleship of Prayer," nevertheless, all members of the Apostleship of Prayer, who duly perform the pious exercise called "The Holy Hour," in order to appease the Most Holy Heart of Jesus, wounded by the injuries of men, and to make our prayers pleasing, are entitled to all the spiritual benefits granted to them by the Rescript of Pope Pius IX, dated 13 May 1875, and by the Brief of Leo XIII, dated 30 March 1886. But it will not be permitted to anyone to add other pious works to the Apostleship, except within the established limits, with which the local Ordinaries enjoy for their respective Dioceses. VI. The faithful who are enrolled in this pious Society, and who, above all others, are devoted to piety, with a singular zeal for the salvation of souls, and are therefore called Zelators and Zelatrices, strive with all their might to promote, day by day, the divine glory, the salvation of souls, and the worship of the Most Holy Heart of Jesus, according to the statutes of the Apostleship. Therefore, they should meet at fixed times, in order to deliberate on all matters that seem most conducive to this end. VII. The principal seat or center of the Society is established in Toulouse. The General Moderator is the Very Reverend General Superior of the Society of Jesus at the time, who can delegate this office to another person chosen by him, who resides in Toulouse. VIII. Besides the General Moderator, there will also be Diocesan Moderators and Directors of individual Societies. Diocesan Moderators, who are to be designated by the local Ordinaries, are established within the boundaries of the Diocese, either by the General Superior of the Society of Jesus at the time, or by the General Moderator, whom the Very Reverend General Superior has delegated in Toulouse. Directors of individual societies are established by the Diocesan Moderator, with the approval of the Ordinary. Both the Diocesan Moderators and the Directors of individual

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societies shall also report to the Ordinary in all matters.

[*Latin ed. p. 753*]

FROM THE SACRED CONGREGATION AND REGULATION 753, concerning all matters pertaining to the Statutes approved by the Apostolic See. IX. For the admission of members, it suffices for the Directors of the individual Societies to inscribe their names in the index of churches or pious places where the Apostolate is instituted, and to distribute badges; it is not necessary to transmit a catalog to the central office. X. The other indulgences and graces previously granted or extended by the Supreme Pontiffs for the aforementioned works of the Apostolate, remain in full force. The Sacred Congregation of Eminent and Reverend Cardinals, entrusted with the affairs and consultations of Bishops and Regulars, has benignly approved and confirmed the aforementioned Statutes. Given in Rome, from the Secretariat of the same Sacred Congregation, on the 11th of July, 1896. I. CARD. VERGA, Prefect. L. A. TROMBETTA, Pro-Secretary. BRIEF of the Most Holy Pope Leo XIII, by which the Sodalitas erected in the church of Saints Andrew and Claudius in Rome is raised to the dignity of an Archsodalitas, for the purpose that the honor and worship of the Most Holy Sacrament may be promoted far and wide through its solemn and perpetual exposition and adoration. On the 8th of May, 1897. LEO XIII, POPE. For the perpetual memory of the matter. — We are always most pleased to follow and adorn with Apostolic benevolence the pious Sodalitates of the faithful, which, for the purpose of promoting the glory of the divine name through a special form of worship, serve as an example and encouragement to others, and which are increasingly spread everywhere according to the custom and the institute of the Roman Pontiffs. Therefore, we have received with a joyful and pleasing spirit the Confraternity, which the pious Congregation of Priests of the Most Holy Sacrament instituted for this very purpose, to solemnly and perpetually...

[*Latin ed. p. 754*]

754 FROM THE SECRETARY'S OFFICE, concerning the brief regarding the exposition and adoration of the Most Holy Sacrament, so that its honor and worship may be spread far and wide, and so that it may bear more abundant fruit each day and attract many members. And since the present Prefect of the aforementioned Congregation General has humbly made prayers to Us, that We might, with kindness, increase the same Confraternity, which, for the condition and piety of its members, is divided into three classes, and which has already been enriched with certain indulgences by this Apostolic See, We deem it fitting to grant these requests. Therefore, embracing all and each of those to whom these Letters are addressed with special benevolence, and absolving and considering absolved from any excommunication, interdict, or other ecclesiastical sentences, censures, and

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penalties, of any kind or for any reason, if they have perhaps incurred them, solely for this purpose, We, for whom nothing is more ancient than to see the mystery of so great divine love observed with the utmost piety, erect and establish, by the authority of these presents, the pious Confraternity existing in the church of the blessed Apostles Andrew and Claudius in this our beloved City, which We declare to be the primary church for this purpose, into an Archconfraternity, endowed with the customary privileges, perpetually. Furthermore, We grant and concede, also perpetually, by the authority of these Letters, that the officials and members, present and future, of the thus erected Archconfraternity may lawfully and may be able to communicate to all and each of the other confraternities of the same name and institution, erected or to be erected throughout the world, preserving the form of the Constitution of Pope Clement VIII, and other Apostolic ordinances issued above, all and each of the indulgences, remissions of sins, relaxations of penances, and other spiritual graces granted by the Apostolic See to the aforementioned Confraternity, and which may be communicated to others. We decree that these presents shall be valid, firm, and efficacious, and shall have and obtain their full and complete effect, and that they shall fully suffice for those to whom they apply, both now and in the future, and that, accordingly, all matters concerning these things shall be judged and decided by ordinary and delegated judges. And if anyone, with knowledge, should judge otherwise concerning these matters, then this shall be declared void and null.

(1) Briefs of January 29, February 26, and March 5, 1875.

[*Latin ed. p. 755*]

FROM THE SECRETARY'S OFFICE. BRIEF 755, whether through ignorance, has come to our attention. Notwithstanding the Constitutions and Apostolic Ordinances, and to the extent that it is necessary, the statutes and customs of the aforementioned Fraternity, even if strengthened by oath, Apostolic confirmation, or any other means, are permitted, with special and individual mention and derogation, contrary to whatever may be. Given in Rome, at St. Peter's, under the Fisherman's Ring, on the 8th of May, 1897, in the twentieth year of Our Pontificate. Loc. Sig. ALOIS. CARD. MACCHI.

FROM THE SACRED CONGREGATION FOR RITES, MARSEILLES. Concerning the Beatification and Canonization of the Venerable Servant of God, John Baptist Gault, Bishop of Marseilles.

Present were the Most Reverend Lord Albert Battandier, Apostolic Protonotary, and Postulator of the Cause of the Venerable Servant of God, John Baptist Gault; and the Most Eminent and Reverend Lord Cardinal Lucidus Maria Parocchi, Bishop of Porto and St. Rufina, Relator of the same Cause; in the Ordinary Session of the Sacred Congregation for Rites, convened on the aforementioned date at the Vatican, according to the

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special provisions of Our Most Holy Lord Pope Leo XIII, issued in the years 1878 and 1895, the following question was proposed for discussion: "Does the Apostolic Process, constructed upon the fame of a holy life, virtues, and miracles in general, of the aforementioned Venerable Servant of God, have validity and relevance in this case and for the purpose in question?"

Furthermore, the Sacred Congregation itself, after carefully considering all matters, and after hearing the voice and written testimony of the Reverend Father Gustavo Persiani, acting in the office of Promoter of the Holy Faith, decided to respond: "Affirmatively, that is to say, it does exist." On the 9th of March, 1897.

Subsequently, a report was made to Our Most Holy Lord Pope Leo XIII by the undersigned Cardinal, Prefect of the Sacred Congregation for Rites, concerning these matters; and His Holiness, having considered the opinion of the Sacred Congregation itself, ratified and confirmed it. On the twenty-second day of the same month and year.

C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation for Rites.

L.SBS. DIOMEDES PANICI & R. C., Secretary.

[*Latin ed. p. 756*]

756 FROM THE SACRED CONGREGATION OF RITES, QUEBEC. Concerning the Beatification and Canonization of the Venerable Servant of God, Sister Mary of the Incarnation, foundress of the Ursuline Monastery in the city of Quebec. In the Ordinary Congregation of the Sacred Rites, assembled on the aforementioned day at the Vatican, in accordance with the special provisions issued by the Most Holy Lord Leo XIII, Pope, in the years 1878 and 1895, the Most Eminent and Reverend Lord Cardinal Lucidus Maria Parocchi, Bishop of Porto and St. Rufina, Relator for the Cause of the Venerable Servant of God, Sister Mary of the Incarnation, at the urging of the Reverend Father Xaverio Cazenave, General Procurator for Missions to Foreign Lands and Postulator for the same Cause, proposed the following question for discussion: "Does it appear that the Processes, both those conducted under Apostolic and those under Ordinary authority, are valid; that the witnesses were duly and properly examined, and that the testimonies were legitimately obtained, in the case and to the effect of which we are speaking?" Furthermore, the Sacred Congregation of Rites, having heard the voice and writings of the Reverend Father Gustavo Persiani, acting in the office of Promoter of the Holy Faith, and having carefully considered all matters, decided to respond: "After obtaining the necessary approvals from the Most Holy [Father] regarding the examination of 17 witnesses examined *ex officio* and 21 who were not heard in the Apostolic Process, and as a precaution, after obtaining the necessary approvals regarding the minor process, the answer is: Affirmative." On

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March 9, 1897. Subsequently, a report on all of these matters was made to the Most Holy Lord Leo XIII, Pope, by the undersigned Cardinal Prefect of the Sacred Congregation of Rites, and His Holiness, graciously granting the requested approvals, ratified and confirmed the judgment of the Sacred Congregation itself, on the twenty-second day of the same month and year.

C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites.

L. S. DIOMEDES PANICI, Secretary.

[*Latin ed. p. 757*]

FROM THE HOLY CONGREGATION OF THE INDEX, Feast Day VI, July 2, 1897. The Holy Congregation of Most Eminent and Most Reverend Cardinals of the Holy Roman Church, appointed by the Most Holy Lord Pope Leo XIII and the Holy Apostolic See to oversee the Index of books of pernicious doctrine, and their condemnation, proscription, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on July 2, 1897, condemned and condemns, proscribes and proscribes, or orders to be condemned and proscribed, and mandates the following works to be added to the Index of Prohibited Books:

M. Díaz Rodríguez. — *Sensaciones de viaje* (Aldea lombarda, Venecia, Florencia, Roma, Nápoles, Alrededor de Nápoles, Constantinopla): Paris, Grarnier Hermanos, libreros editores, 6, Rue des Saints-Pères, 1896.

Historia General de la Masonería des de los tiempos mas remotos — hasta nuestra época, by Danton Gr. 18, with a Preface by the eminent writer Don Emilio Castelar — Barcelona, D. Jaime Seix y Compañía, 1882.

Der Zukunftsstaat. Ein Trostbüchlein von Canonicus Dr. A. Rohling, o. ö. Professor der Exegese an der deutschen k. k. Karl-Ferdinands-Universität in Prag. — St. Pölten 1894. Druck u. Verlag der Pressvereins-druckerei (Franz Chamra) St. Pölten, Linzerstrasse 7.

Civitas futura. Libellus consolatorias auctore Canonico Doctore A. Rohling ordinario publico Professore Exegeseos in teutonica caesarea regia Pragensi Universitate Carolo-Ferdinandea. S. Hippolyti 1894. Typis et sumptibus typographicae Societatis typographicae (Francisci Chamra) S. Hippolyti in via Linciensi 7.

David L. O. — *Author of the work* — *Le Clergé Canadien, sa Mission, son Œuvre* — Montreal 1896 — prohibited. Decree of the Sacred Congregation of the Holy Office, December 9, 1896; he submitted himself commendably, and the work was disapproved.

[*Latin ed. p. 758*]

758 FROM THE SACRED CONGREGATION OF THE INDEX: Therefore, no one, of whatever rank and condition, may dare to publish, or, hav-

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ing published, to read or retain the aforementioned works, in whatever place and in whatever language; but they are bound to deliver them to the Ordinary of the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of prohibited books. These matters, having been reported to the MOST HOLY POPE LEO XIII through me, the undersigned S.I.C. from the Secret Archives, HIS HOLINESS approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome on the 3rd of July, 1897. ANDREW CARDINAL STEINHUBER, Prefect. FR. MARCOLINUS CICOGNANI, O.P., from the Secret Archives. Place of the Seal. On the 5th of July, 1897. I, the undersigned, Magister Cursorum, testify that the aforementioned Decree was affixed and published in the City. Vincent Benaglia, Magister Curs.

[*Latin ed. p. 759*]

759 SUMMARY OF THE ACTS CONTAINED IN THIS VOLUME XXIX: LETTERS AND ACTS OF THE HOLY FATHER.

Letter of His Holiness Pope Leo XIII to William Alliala, president of the council of the anti-Masonic association, concerning the organization of said association and the first meeting thereof, page 137.

Apostolic Letter of His Holiness Pope Leo XIII concerning Anglican ordinations, 193.

Encyclical Letter of His Holiness Pope Leo XIII, concerning the Rosary of the Blessed Virgin, 204.

Letters of His Holiness Pope Leo XIII to the Emperor of Ethiopia, in which he implores him to release Italian prisoners of war, and the Emperor's response, 268.

Apostolic Constitution of His Holiness Pope Leo XIII concerning the prohibition and censorship of books, 388.

Apostolic Letters of His Holiness Pope Leo XIII, by which the Vatican Seminary is canonically established with its schools, 513.

Encyclical Letter of His Holiness Pope Leo XIII, concerning the presence and wondrous power of the Holy Spirit, 644.

Apostolic Brief of His Holiness Pope Leo XIII concerning the privileges of Latin America, 659.

Letters of His Holiness Pope Leo XIII to Cardinal Richard, Archbishop of Paris, concerning the authors of the *Ephemeris Revue anglorum*, 664.

FROM THE HOLY CONGREGATION.

Lublin, or Warsaw: Regarding a marriage dispensation; a dispensation is granted concerning a marriage that has been consummated but not ratified. 3.

Paris: Regarding the nullity of a marriage; the sentence of the Curia is

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confirmed, which declared that the marriage is null due to a defect in the Tridentine form. 8.

Pralen: Regarding a transaction; it is questioned whether the ancient transaction should be observed concerning the collation of benefices by the Bishop and Chapter, etc. 24.

De Serena and St. James of Chile: Regarding excardination; excardination is granted, by the grace of His Holiness. 31.

Rome: Regarding an election; the question is about the validity of an election made among members. 65.

Algeria: Regarding the nullity of a marriage; the sentence of the Archdiocesan tribunal is confirmed, declaring that there is no nullity of marriage, due to a presumed fear. 71.

[*Latin ed. p. 760*]

760 SUMMA ACTORUM: January, funeral; it is decided that the Fathers of the Capuchin Order shall have the right to carry the cross in processions of the dead within the parish.

80 Utinensis: concerning a dispensation from irregularity; a dispensation from irregularity is granted to a priest who had become irregular due to a wound received in his right hand.

88 Mexicana: concerning the faculty of celebrating Mass three times; the requested grace is granted to the Archbishop for a period of five years.

91 Gaudisien: concerning burdens; the question is whether certain canons are obligated to pay a tax, called the "mediadecimae."

96 Parisien: concerning the nullity of marriage; the sentence of the court is confirmed, which declared the marriage to be null.

138 Montisfalisci: concerning the nomination to a canonical benefice; it is inquired to whom the nomination to the benefice should be given, since those passively called appear to lack the requirements desired by the founder.

159 Mechlinien: concerning a dispensation from marriage; a dispensation is granted concerning a marriage that was valid but not consummated.

162 Pacten: concerning parochial rights; the question is about the parochial rights between the rector of the parish church and the rector of a chapel.

175 Theatina: concerning a dispensation from marriage; the matter is whether a marriage that was valid but not consummated remains so.

184 Parisien: concerning marriage; the sentence of the Parisian court is confirmed, in which it is declared that there is no proof of the nullity of the marriage.

210 Apuana: concerning doubts about resignations of benefices.

225 Parisien: concerning marriage; a dispensation is granted concerning

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a marriage that was valid but not consummated.

275 Matriten: concerning a dispensation from marriage; a dispensation is granted concerning a marriage that was not consummated.

290 Brundusina: concerning precedence; the question is to whom the right of precedence belongs between two canons.

297 Pharen: concerning rights; the question is regarding the celebration of a solemn Mass on the day of commemoration of all the faithful departed, and the administration of certain alms.

303 Sanctae Fidei Neogranaten: concerning rights; the question is whether, upon the death of the Archbishop, the office of the titular Bishop, who was given as an auxiliary, ceases.

321 Barcinonen: concerning a dispensation from marriage; a dispensation is granted concerning a marriage that was valid but not consummated.

331 Montis Alti: concerning burdens; it is inquired whether a benefice has the burden of residing and assisting the parish priest.

351 It is granted the faculty of applying Masses through sacellans.

383 Forolivien and Brictinorien: concerning marriage; a dispensation is granted concerning a marriage that was valid but not consummated.

400

[*Latin ed. p. 761*]

SUMMARY OF ACTIONS of the Nanceien and Tullen tribunals, regarding marriage dispensations: a dispensation is granted concerning a marriage already consummated. 411 The Piacentina tribunal in Hispania grants indulgences; an indulgence is denied to a priest wishing to remain longer in Rome after having obtained the canonical benefit in his diocese. 420 The Valentina tribunal concerning dissolution; it is decided that it is not appropriate to grant the petition made regarding the dissolution of a religious institute. 425 The Ripana tribunal concerning rights; an excessive compensation is denied for the administration of the economic affairs of a seminary. 429 Regulations concerning taxes to be paid to episcopal chanceries. 433 The Parisien tribunal, regarding marriage dispensations; a dispensation is granted concerning a marriage already consummated and not consummated. 449 The Parisien, or Aurelian, tribunal, regarding marriage dispensations; a marriage that is only valid is dispensed. 454 The Monoecen tribunal, concerning distributions; this concerns distributions to be made according to the established capitular statutes. 463 The Taurinen tribunal, concerning the nullity of marriage; no marriage is declared null due to the vice of clandestine celebration. 470 The Neapolitana tribunal, concerning marriage; it is not established that the marriage is null, but a dispensation is granted as if it were only valid. 483 The Venetiarum tribunal, concerning irregularities; the grace of promotion to the sacred orders is granted at the discretion and prudence of the Ordinary. 495

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The Arianen tribunal, concerning the office of the Penitentiary; this concerns the distributions received by the penitentiary while sitting in the confessional, and for hearing confessions, and for attending to the faithful. 498 The Varsavien, or Parisien, tribunal, concerning the nullity of marriage; no marriage is declared null due to the defect of clandestine celebration. 518 The Leopolien, or Premislien, tribunal, regarding marriage dispensations; after several proposals, it was finally declared that it is established that the marriage was not consummated, so that a dispensation can be granted concerning a marriage already consummated. 536 The Castrimaris tribunal, concerning the execution of a sentence; the decree of the Castrimaris tribunal is confirmed. 543 The Mediolanen tribunal, concerning the nullity of marriage; the sentence of the tribunal is confirmed, which declared no marriage null due to the woman's impotence. 552 The Slrigonen tribunal, regarding marriage dispensations; a dispensation is granted concerning a marriage already consummated. 582 The Melevitana tribunal, concerning emphyteusis; the requested reduction of the canon by the emphyteuta is denied. 591 The Neapolitana tribunal, concerning the nullity of marriage; it is decided that it is not established that the marriage is null. 594 The Romana tribunal, concerning residence; this concerns whether a certain infirmity is sufficient to legitimize a cause for absence. 608 The Tunquen tribunal, concerning rights; this concerns the annulment of two decrees of the Apostolic Delegate concerning canonical rights. 619

[*Latin ed. p. 762*]

762 Bordeaux, concerning the dispensation for marriage; a dispensation is granted for a marriage that is valid but not consummated.

665 Naples, concerning precedence; a dispute exists between two sodalities as to which has precedence.

675 Circular letters from the Sacred Congregation of Councils to the Ordinaries of South America regarding the governance of seminaries.

680 Barcelona, concerning marriage; a dispute exists as to whether a marriage is only valid.

705 Casale, concerning the interpretation of a pious bequest; it is asked whether two Masses per week are to be offered.

718 Warsaw, concerning the dispensation for marriage; it is decided that a dispensation should be granted for a marriage that is valid but not consummated.

721 Bergamo, concerning the last will and testament; the question is between the heirs whether the bequests of two testators of the same family are to be combined.

731 Reggio, concerning rights; the question is between the Canons and the Canon-parish priest regarding the limits to be assigned to the rights of

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the latter.

734 Nantes, concerning elections; an obstacle is placed to the election of one of the descendants by another descendant, who does not meet the requirements established by the founder.

742 From the Sacred Congregation of Bishops and Regular Canons, Rome, concerning the administration; a question is raised between the members regarding the expulsion of a member, etc.

36 Majorca, concerning a convention and decree; it is decided that the Carmelites should be entrusted with the custody and administration of the Sanctuary and College of the Blessed Virgin of Lluch.

109 Aachen or Liège, concerning compensation; the question is whether a former religious priest should be compensated for damages suffered due to his leaving the Order.

115 Novara, concerning the execution of a sentence; the petition of a priest who was formerly a religious is rejected, as he considered that no adequate provision had been made by the Ordinary.

118 Instruction concerning secular and regular clergy who attend universities for the purpose of study.

359 Doubts concerning the profession of religious.

436 Doubt concerning the custom by which tertiary sisters, etc., visit their parents' home and remain there to care for them in the event of illness.

559 The Third Order of St. Francis, concerning precedence; Franciscan tertiaries claim precedence over lay confraternities.

627 Nereto, concerning exemption; various doubts are raised concerning the exemption of religious from the jurisdiction of the Bishop.

682 Cadiz or Santander, concerning bequests; the matter concerns the execution of pious bequests, which had been delayed for a long time.

689 Letter from the Most Reverend Prefect of the Sacred Congregation of Bishops.

[*Latin ed. p. 763*]

SUMMARY and Regulations addressed to the Superior General of the Order of the Friars Minor of Saint Francis, concerning the union of the four Franciscan families. . . . 696 Letters from the Superiors of the Franciscan Order to the Eminent Prefect of the Sacred Congregation, regarding the union of the four Franciscan families. 697 Statutes of the Pious Society of the Apostleship of Prayer. 750 FROM THE SACRED CONGREGATION FOR RITES. Concerning the beatification of the venerable Servant of God, John Baptist Vianney, parish priest of Ars. 38 Regulations for obtaining new Masses and Offices of the Saints. 41 Decree: concerning doubts regarding the consecration of a church. 44 Doubt concerning the Masses of Saint Aloysius Gonzaga, to be celebrated on designated days by the Ordi-

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naries, for the solemnity of the feast in each church and oratory. 45 Various doubts concerning the Order of the Friars Minor of Saint Francis, the Capuchins. 46 Various doubts concerning the Order of the Friars Minor of Saint Francis, the Capuchins. 47 Various doubts concerning the Order of the Friars Minor of Saint Francis, the Capuchins. 49 General Decree. Regarding the prayers and sequences in Masses for the Dead. 51 Decree concerning the celebration of multiple Masses in the same church, on the same day, and for the same saint. 52 Various doubts concerning Strigonien. 52 Various doubts concerning Strigonien. 54 Various doubts concerning the Order of the Friars Minor of Saint Francis, the Capuchins. 56 ACTS. 763 Various doubts concerning the Order of the Friars Minor of Saint Francis, the Capuchins. 58 Concerning the beatification of the venerable Servant of God, Gabriel of the Virgin of Sorrows. 60 Decree concerning Masses for the repose of the soul. 62 Concerning the beatification of the venerable Servant of God, Sister Joan Guillen, of the Order of the Hermits of Saint Augustine. 119 Concerning the beatification of the venerable Servant of God, Joan of Arc. 121 Concerning the beatification of the venerable Servant of God, Anthony Mary Gianelli, Bishop of Bobbio. 122 Decree concerning the Mass and Office of Saint Matthew the Apostle and Saint Agapitus the Pope. 190 Concerning the beatification of the venerable Servant of God, Brother Francis of Camporubeo. 190 Concerning the beatification of the venerable Servant of God, Marcellin Champagnat, founder of the Little Brothers of Mary. 227 Concerning the beatification of the venerable Servant of God, Magdalene Sophie Barat, of Rome (or Paris). 319 Concerning doubts regarding the Little Office of the Blessed Virgin. 364 Concerning the Order of the Friars Minor, the Capuchins; doubts regarding the commemoration of the Holy Family in the suffrages of the Saints. 365 Concerning the canonization of Blessed Peter Fourier of Mataincourt, of Tullen (or Saint-Dié). 365 Concerning a doubt regarding the occurrence of Second Vespers, of Geneva.

[*Latin ed. p. 764*]

764 Summary of acts pertaining to the votive feast of the B. Virgin Mary, Immaculate, with the first vespers of the following Sunday.

369 Rome: Doubt concerning the altar, which is commonly called the sepulcher.

369 Belleville: Doubt concerning the feast, office, and Mass in the church dedicated to the Holy Infant Jesus.

370 Annecy: Confirmed is the cult rendered already to the Servant of God Pontius, Abbot.

440 Philadelphia: Concerning the beatification of the venerable Servant of God Nepomucene Neumann.

442 Granting the faculty of reciting one Mass for the repose of souls

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during the week.

444 Montauban: Doubt concerning the litanies of the Saints.

445 Paris: Concerning the beatification of the venerable Servant of God Louise de Varillac.

445 Letters to the Count of Acquaderni concerning the centennial celebration of the redemption of mankind.

501 Rome: Doubt concerning the decree of the Holy See regarding private Masses for the repose of souls.

504 Milan: Concerning the canonization of the Blessed Anthony Zaccaria, founder of the Regular Clerics of Saint Paul.

510 Quebec: Concerning the beatification of the venerable Servant of God of Montmorency Laval, the first Bishop of Quebec.

512 Milan: It is granted that in the Ambrosian liturgy, as is done in the Roman liturgy, the feast of Saint Joseph, the spouse of the B. Virgin Mary, and the Annunciation of the same B. Virgin Mary, be celebrated on the days of March 19 and 25.

566 Prayers of the Most Reverend Archbishop of Milan, directed to this effect, so that to the clergy, in the sacred offices, who follow the Ambrosian rite, the obligation of reciting the entire office for the dead may be relaxed.

568 Spoleto or Norcia: Concerning the canonization of the Blessed Rita of Cascia.

630 Doubt concerning the Holy Eucharist to be preserved.

638 Corisopat: Concerning the beatification of the venerable Saint Michael Le Nobletz.

700 Marseilles: Concerning the beatification of the venerable Servant of God John Baptist Gault, Bishop of Marseilles.

755 Quebec: Concerning the beatification of the venerable Servant of God, Sister Mary of the Incarnation.

756 From the Indulgences:

505 Tulle, or Saint-Dié: Decree by which it is indicated that it is possible to proceed safely to the solemn canonization of the Blessed Peter Fourier of Mataincouria, General Prefect of the Order of Regular Canons of Saint Augustine.

509 Decree: Concerning the Missionaries of Saint Vincent de Paul. Concerning the indulgences attached to the recitation of the prayer "Angelus Domini" and the antiphon "Regina Coeli."

63 Milan: When crosses and rosaries, etc., are blessed, do they lose their indulgences if they are sold?

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[*Latin ed. p. 765*]

SUMMA ACTORUM Urbis et Orbis, concerning decrees regarding praise, the beginning of which is: "May God be blessed," 447. A petition for the proper fulfillment of the nineteenth century, granting an indulgence of 100 days, 632. A prayer to Saint Margaret of Cortona, granting an indulgence of 100 days, 633. FROM THE SACRED CONGREGATION OF THE INDEX: A decree prohibiting certain books, 124. A decree condemning certain books, 379. A decree prohibiting certain books, 757. FROM THE SACRED CONGREGATION OF THE HOLY ROMAN CHURCH, THE INQUISITION: Doubts concerning contracts of purchase and sale, 126. Doubts concerning usury, 129. Doubts concerning usury among the faithful residing in Cambodia, 132. A doubt concerning the use of butter as a condiment, 247. A doubt concerning profit from a loan, required according to civil law, 248. A doubt concerning the wine to be used in the Holy Sacrifice of the Mass, 316. Doubts concerning the wine to be used in the Holy Sacrifice of the Mass, 317. Concerning contracts of purchase and sale, 381. Doubts concerning the commerce of opium, 385. Doubts concerning the use of opium, 386. Doubts concerning the authority of Bishops in Councils, etc., 446. 765. A doubt concerning the tradition of instruments and the laying on of hands at the time of Holy Ordination, 560. Doubts concerning the baptism of the children of the unfaithful, 563. The Pauline privilege is granted to a woman converted to the Catholic faith, 564. The Catholic party is excused from dealing with the unfaithful party, and the Bishop is granted the faculty of dispensing in ordinary cases, 565. Concerning the baptism to be conferred upon an unfaithful person who is dying, and who has given a name to a heretical sect, 569. Concerning the sacred oils and the Sacrament of the Eucharist, 571. Doubts concerning wine, 572. Doubts concerning wine for the Sacrifice of the Mass, 572. Doubts concerning wine for the Sacrifice of the Mass, 572. A doubt concerning alms offered at Masses, 573. Concerning absolution granted by a priest who is not approved, 574. Concerning the absolving of an accomplice, 574. What are the acts undertaken by the Apostolic See? 576. Concerning the oil blessed by a priest, 576. A doubt concerning affinity, 576. Concerning the authenticity of the text of the First Epistle of Saint John, chapter 5, verse 7, 637. A doubt concerning the impediment of disparity of cult, 638. A decree concerning the cohabitation of an unfaithful spouse, 639. Doubts concerning the legitimacy of marriages, 640.

[*Latin ed. p. 766*]

766 *SUMMA ACTORUM* Doubts regarding marriages contracted by Indians.

641 Doubts regarding mixed marriages.

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641 A doubt regarding a dispensation granted by telegraph.

642 A doubt regarding cremation performed against the will of the deceased.

642 A doubt regarding those who contract marriage before an un-Catholic minister.

643 The *Lex tridentina* [Council of Trent canon] is not invalidated by the non-observance of heretics.

643 Doubts concerning Holy Orders.

703 A doubt regarding artificial insemination.

704 *EX S. C. DE PROPAGANDA FIDE* Rules to be observed by missionaries when sending letters or documents to the Holy Congregation.

246 Collection of resolutions concerning profit from loans.

249 Decree of the Holy Congregation concerning the rites of the Orient.

437 It is doubted whether baptism can be conferred upon adult non-believers, in the case where there is fear that they will afterwards lead a wicked life.

634 A doubt regarding the anniversary of a Bishop.

635 *EX S. POENITENTIARIA APOST.* A doubt regarding usury, which appears to be immoral.

248 *EX ACTIS CONSISTORIALIBUS* Concerning the Consistory held on November 30, 1896.

272 Concerning the Consistory held on April 18, 1897.

577 *EX S. CONG. STUDIORUM Ordinis Praedicatorum* Confirmation of the constitutions for the faculty of Canon Law.

371 *EX SECRETARIA BREVIUM* A brief by which plenary indulgences are granted on the occasion of the outgoing year, 25, during which Pope Leo XIII was inscribed in the Third Order of St. Francis.

636 Brief of His Holiness Pope Leo XIII, by which the Sodalitas erected in the church of Saints Andrew and Claudius in Rome is raised to the dignity of an Archsodalitas, for the purpose that the honor and worship of the Most Holy Sacrament may be promoted far and wide through its solemn and perpetual exposition and adoration.

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[*Latin ed. p. 767*]

767 GENERAL INDEX OF CONCLUSIONS NOTED IN MOST OF THE ACTS CONTAINED IN THIS VOLUME, THE SUBJECT MATTER OF WHICH IS AMPLY EXPLAINED OR STATED IN THE INDIVIDUAL ACTS. These conclusions are contained under the following words: Coadjutor. Custom regarding divine worship. Marriage.

Coadjutor: Coadjutorates, Suffraganates, or spiritual assistance granted

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to a Bishop by the Apostolic See, cease with the death of the coadjutor, whenever this office was established only temporarily. page 34. However, a perpetual coadjutorate with future succession does not expire with the death of the coadjutor; but rather, it passes into full right, provided that the coadjutor had the right to the office with perpetual validity while he lived; after his death, he acquires full right to the office. ibid. A perpetual coadjutorate for episcopal sees is ignored by law and exceeds it; because whatever limits the jurisdiction of the Pastor is abhorrent; so that he who alleges it must prove it. ibid.

Custom regarding divine worship: Customs are condemned by which the divine worship is injured. Marriage regarding domicile. Agreements. Tertiary Franciscan orders. But not those which cause no prejudice either to the piety of the faithful, or to the decorum of the Church. page 88. From the Ceremonial, all should proceed under a single Cross in funeral processions; nevertheless, according to the constant jurisprudence of the Church, such a law is modified by contrary custom from time immemorial. ibid.

Marriage: For the strengthening, not the consummation, of marriage, the oath of the spouses, and the depositions of witnesses, who testify concerning the religion of those who swear, are sufficient. page 543.

Marriage regarding domicile: The domicile of children, for the purpose of contracting marriages, is considered, by law, to be in that place where the *paterfamilias* has his *lares*. page 23. The *paterfamilias* does not lose the domicile once acquired, even if he often leaves the place, even for a long time, unless he leaves with the intention of not returning. ibid.

[*Latin ed. p. 768*]

768 GENERAL INDEX. Agreements. Only those are to be considered as having entered into agreements who, having abandoned their domicile, observe the agreements; for nothing is certain with those who do not have fixed abodes, but rather, seeking what is suitable for the faith, they inquire where they can find those who will associate with them and where they can establish laws to safeguard what has been agreed upon, ibid. Not a lesser code of canon law, book 1, title 1. Almost as if a domicile is acquired by reason of agreements, see "de pactis," page 114. For agreements to be binding, it is necessary that there be will and intention; concerning which, Scripture is necessary; for an agreement is like someone who requests a place for litigation, whether in writing or without writing, for the expeditious handling of the matter, and the law of agreements has force, beyond opinion, in that it binds, as is stated in the code "de pactis," ibid. Furthermore, it is stated that, even if someone remains there for a year, as if acquiring a domicile, ibid. Tertiary Franciscans. This is the jurisprudence of the Holy Congregation, namely, that a marriage cannot validly take place between a man and a woman departing from the place of their habitation without the intention of permanently leaving it, even if they request a parish with the intention

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only of entering into marriage, page 24. The erection of the Secular Third Order, page 630. Marriages, in order to enjoy validity, must be celebrated before the proper pastor, or another priest with the permission of the pastor or by the delegation of the bishop, page 159. One of these privileges is the granting to both the Third Order, male and female, the right to participate in funeral processions of those assigned to them, in addition to other benefits. Concerning the marriages which must be celebrated before the pastor, or before the pastor of the church where a domicile or quasi-domicile is retained, it necessarily follows that the right of assisting at marriages is linked to the office of the pastor, and that the Tertiary Women Franciscans of the place of Serino, in the association of funerals and in processions, must be able to follow the coffin and the images, ibid. IMPRIMATUR. Fr. Albert Lepidi, O.P., S.T.P., Master. IMPRIMATUR — Franciscus Cassetti, Patriarch of Antioch, Vice-General.

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